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MINUTES OF EVIDENCE

TAKEN BEFORE THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

VOLUME I.

Presented to Parliament by Command of His Majesty.

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ROYAL COMMISSION ON DIVORCE AND MATRIMONIAL CAUSES.

VOLUME I.

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ROYAL COMMISSION ON DIVORCE AND MATRIMONIAL CAUSES.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

Winchester House, St. James's Square, London, S.W.

FIRST DAY.

Friday, 25th February 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Hon. HENRY GORELL BARNES called and examined.

1. (*Chairman.*) You are Secretary to the Divorce Commission?—Yes.

2. You have collected certain materials to place before us?—Yes.

3. Do you produce first the Blue Book, number 2, 1894 (Cd. 7392), containing the reports presented to the House of Commons on the laws of marriage and divorce of foreign countries?—Yes.

4. We can only get one copy of that, and that I have preserved myself for some years. No others are obtainable?—No others are obtainable.

5. Also, you produce the continuation number 2, 1903 (Cd. 1468), presented to Parliament?—Yes.

6. That brings matters up to 1903?—Yes.

7. That we have copies of. Then, "Special Reports "to the United States Government on Marriage and "Divorce" which at pages 333–389 contains a "Digest "of the Laws of Marriage and Divorce in Foreign Coun- "tries," and at pages 277–327 a "Digest of the Laws "of Divorce in the various States and Territories of "the United States of America," and (page 268) a "Synopsis of the Statutory Causes for Absolute "Divorce, for Limited Divorce, and for Annulment "by States and Territories thereof"?—Yes.

8. We have been able to get two copies of that. One, I think, is in circulation, and there is another copy here. It is a most valuable book, because it gives a mass of details which are very useful. Also, "The Code Civil Suisse of 10th December 1907, sent by "the Foreign Office as being subsequent to the Returns "of 1903, and comes into force in 1912"?—Yes.

9. Also, "The French Code, Table VI., of Divorce "sent by the Foreign Office, revised up to date"?—Yes.

10. Also, "A Report on Changes in Belgian Divorce "Law, sent by the Foreign Office"?—Yes.

11. Also, "Return to the House of Commons, 1894 "(H.C. 144, 145), of the Laws of Marriage and Divorce "in the Self-Governing British Colonies, except "Canada"?—Yes.

12. Also, "The like Return for Canada (H.C. 323, 324)"?—Yes.

13. Also, "The Continuation of the last two, viz., "Papers relating to the Laws of Marriage and Divorce "in the Self-Governing British Colonies, presented to "Parliament in 1903 (Cd. 1785)"?—Yes.

14. There are two or three of which we have direct statutes. Also, "The Statute of the Colony of Vic- "toria of 1906 (No. 2062) to amend the Marriages Act, "1890." Also, the "New Zealand Consolidated Sta- "tutes, Appendix D., Volume 2, c. 50, consolidating the "Acts relating to Divorce and Matrimonial Causes"?—Yes.

15. That is a very important Act from a point of view we shall see presently.

16. Also, "The Consolidation Act, No. 115, of the "Statutes of New Brunswick for 1903"?—Yes.

17. The last three have been sent by the Colonial Office?—Yes.

18. Have you a letter of the 5th January 1910, from the librarian of the Colonial Office?—Yes.

19. Would you hand it in, please?—Yes. (*Handed in.*)

20. I need not read the whole of it. It refers to the examination to see if there is any subsequent legislation on the subject of divorce in respect of those colonies included in the 1903 returns, and the Victoria and the New Zealand Acts which I have just referred to are mentioned. From these materials have you prepared a short analysis of the divorce laws of the various European countries?—Yes, I have a corrected copy.

21. I think you have taken a good deal of trouble to make it as accurate as you can?—Yes.

22. You have given a rough summary of the various laws which the Commissioners can verify if they choose

by a reference to the books and statutes themselves?—Yes.

23. I think you might give one or two instances to show what has been done. You wish to refer to the French and Swiss Codes to show how it has been done. I will just take France?—I can let the Commissioners have copies of this to check it now, if they like.

24. I thought they had them?—No, not of this; the French——

(*Chairman.*) Oh, I do not think we want that. It is taken from the Code. The causes; defences in addition to traverse gathered from the Code; then the remarks. "Separation permitted, but where separation "is continued for three years converted as a right into "divorce on application of either party. Code Civil, "Article 310." I have made that correction as to the Civil Code.

(*Mr. Rufus Isaacs.*) That is just what I was going to ask—where we should find this?

(*Chairman.*) Well, anything special is put in in that way. This will be corrected from this correct copy. Then there is this important point, "The pub- "lication in the press of the proceedings in actions for "divorce is prohibited under penalty of a fine of from "100 francs to 2,000 francs."

(*Lord Guthrie.*) Does that mean a total prohibition, or only of details?

25. (*Chairman.*) We had better turn to the Code at once. This is the section. It is part of section 239: "The court may order that the case be heard in camera. "The publication in the press of the proceedings in "actions for divorce is prohibited under penalty of a "fine of from 100 francs to 2,000 francs as provided "by Article 39 of the law of the 30th July 1881." Then I will add one more instance to show how it is done. Switzerland is the last. There the causes are given, the defences are given, and the remarks. (1) "Separation permitted, but one of the parties can "demand a divorce if reconciliation does not take "place (as of right after three years)." As to 4, which is malicious desertion for two years, "Action can only "be brought after six months from decree calling on "absentee to return." That, I think, is intended to show how this document is made up?—Yes.

26. Then you also produce the communication from the Secretary of State for Foreign Affairs, enclosing replies received by him from the following Embassies: "Vienna, St. Petersburg, Paris, Brussels, Berne, the "Hague, Madrid"?—Yes.

27. Then there is a letter of the 12th January 1910, which is a letter you sent to the Under Secretary of State with regard to these inquiries?—Yes, I requested the Under Secretary of State to be good enough to cause inquiries to be made in foreign countries as to "Whether there are any, and, if so, what laws, regula- "tions or rules dealing with the publication in the "public press of reports of proceedings in divorce and "matrimonial causes," and I annexed the list of those countries with regard to which I ventured to ask that inquiries might be made, and I asked also that a request be made of His Majesty's Ambassador at Washington in relation to the matter.

28. And you got the replies?—Yes.

29. (*Chairman.*) I think it will be as well that those should be handed in. The others will be produced when they are received. Here are those from Vienna and St. Petersburg and Paris. This is Vienna. I suppose it is the Embassy there, or Consulate. "With reference "to your circular despatch of this series of the 18th "instant, I have the honour to report that according "to the law of Austria all divorce and matrimonial "causes must take place in public, and the proceedings "may consequently be published in the press. Except- "tions to this rule are, however, provided for in the "following paragraph," and then he gives the para- graph: "'The proceedings are not to be conducted "'in public, if morality or public order appear to "'be endangered thereby, or if there is reasonable "'ground for apprehension that publicity may be mis- "'used with the object of disturbing the proceedings "'or of interfering with the conduct of the case. The "'court may, moreover, on the appeal of one only of "'the parties, exclude the proceedings from publicity, "'if private family affairs have to be proved or dis- "'cussed in order to settle the dispute. Publicity "'may be excluded for the whole or part of the pro- "'ceedings, but in every case the verdict must be given "'in public. In so far as publicity is excluded from "' the proceedings, the publication of those proceedings "'is also forbidden.' It will be seen that the advisa- "bility of conducting any proceedings in private lies "within the jurisdiction of the court. The publication "in the press of any such proceedings is punishable "under section 309 of the Austrian Penal Code by "imprisonment from one to three months. Any pro- "ceedings not conducted in private may be published "without restriction in the press." Then St. Peters- burg. He acknowledges the inquiry: "I am informed "that the Russian Penal Code (Article 1038, Volume "XV. of the Corps des Lois), and the Press and Censure "Statute (Article 78, Volume XIV. of the Corps des "Lois), forbid the publication of all reports of pro- "ceedings which are conducted in camera. As the "proceedings of the ecclesiastical consistories, to whom "jurisdiction in divorce cases is assigned and conducted "in camera, it follows that the publication of any "details in divorce proceedings constitutes a penal "offence. With regard to other matrimonial cases, it "is enacted by Article 325 of the Code of Civil Pro- "cedure that suits for the maintenance of illegitimate "children should be held in camera. Lastly, in virtue "of Article 325 of the Code, the tribunal may decide "that proceedings be held in camera if it considers that "publicity would be prejudicial to religion, order, and "public morals, and, according to Article 326, the same "procedure may be followed if the two parties to the "suit express a desire to that effect, and if the tribunal "consider it admissible. In all these cases the fact of "proceedings being held in camera makes it illegal for "the public press to publish any details of them." Then Paris—I do not think I need read that. It sets out that particular section of the Code. It also adds this: "That in all civil causes the courts and tribunals "may prohibit the report of the proceedings. Such "prohibition shall not be applicable to the judgments "which may always be published. It is similarly "forbidden to report the private deliberations of "the jury or of the courts and tribunals. Every "infraction of these provisions is punishable by a "fine of from 100 francs to 2,000 francs." Then Brussels—I need not read the formal parts: "I am "informed by the legal adviser to His Majesty's "Legation that there are no special laws or regulations "in Belgium on this subject. The press being free, "any journalist may report what is said in open court, "though if the report is incorrect the damaged party "can bring an action against the paper. As a rule, "the Belgian press does not report divorce cases "unless they present a real and special public interest, "and even then the names are not mentioned. The "witnesses in Belgian divorce cases are heard in "camera, and therefore no report of their evidence "can get into the press unless a lawyer gives it, which "is entirely against the etiquette of the bar, and there "is believed to be no instance of such a thing happen- "ing. I should point out that divorces are frequently "granted in Belgium for incompatibility of temper or "by mutual consent, and these cases being undefended "give no opportunity for press reports." Then, Berne, Switzerland. That is in French. He says this: "There does not exist in Switzerland, according to "our knowledge, any disposition specially concerning "the reports in the press in cases or affairs of divorce. "These cases are naturally restrained by the fact that "in most of the places affairs of this nature are not "published. Such is the case in the following places." Then he mentions Zurich, Glaris, Baleville, and so on. According to the Code Civil, on the 12th March 1900, there can be a shut door on the demand of one of the parties when it is concerning a dispute between hus- band and wife or between parents and children. "Besides, in all the cantons there is a principle "excluding publicity of anything that can offend "public morals." Then, there is the Hague: "No "provisions exist in the Netherlands of the nature "indicated. Matters concerning divorce and separa-

" tion are dealt with in closed doors, so that it is " impossible to publish reports of the proceedings in the " press." The last is Madrid: " Civil divorces are very " rare in Spain, and there are no special rules regarding " the publication of proceedings connected with them. " Generally speaking, the newspapers may publish " anything they hear in the public sessions at the " law courts, but if the president of the court thinks " that anything not fit for publication is about to take " place, he may close the court and further proceedings " remain secret. In ecclesiastical courts divorce cases " are generally heard with closed doors." That is all we have at present. Others shall be handed in as they come. I should like to draw attention to one Act which the Colonial Office has sent us which deals with this point. It is the latest New Zealand Act. This, it will be seen, contains a clause, section 65 of the Statute of 1908, No. 50: "The court may, on the " application of either the petitioner or the respondent, " or in its discretion, if it thinks it proper in the " interests of public morals, hear and try any such " suit or proceeding in chambers; and may at all " times in any suit or proceeding, whether heard and " tried in chambers or in open court, make an order " forbidding the publication of any report or account " of the evidence or other proceedings therein, either " as to the whole or any portion thereof; and the " breach of any such order or any colourable or " attempted evasion thereof may be dealt with as " contempt of court."

30. Mr. Secretary, I think you have since communicated with the Colonial Office, and they have kindly consented to look through the statutes of all the other colonies to see if there is a similar provision?—All the other self-governing colonies.

31. Then I think you produce a copy of the Civil Judicial Statistics for 1907, Part 2?—Yes.

32. And a copy of that part of the "Reformatio Legum Ecclesiasticarum" which relates to divorce?—Yes.

33. Copied from the book at the British Museum?—Yes.

34. And there is an English translation?—Yes.

35. Has that been circulated?—Yes.

36. Then you produce a copy of the Divorce Commission Report of 1853. Has that been circulated?—Yes.

37. And then a copy of the County Court Committee, 1908, so far as it relates to matrimonial causes?—Yes.

38. And also the Commissioners have had copies of English statutes relating to the subject of divorce?—Yes.

39. (*Mr. Rufus Isaacs.*) I would like to ask one question. In the tabulated statement which you produce there is no reference to the statutes?—No, because I have taken it from Blue Books, and from the United States Book. I have not had available statutes.

(*Chairman.*) Might I say on that, that I have been through this myself with the utmost care yesterday, and as far as I can make out it is substantially accurate. There are one or two slight corrections which I have made. What I was going to suggest was that, perhaps, one of the Commissioners—I do not know whether Lord Guthrie would do it any day when he is free—would check it over. It is an awful labour, and it would take hours, but now it is condensed it could be done in an hour or so. The Foreign Office book has collected them from the embassies, saying, "This is the law. You " might just read one to show us." Then the Americans have done the same thing rather more fully. The actual sections are not given.

(*Mr. Rufus Isaacs.*) The object of my question was not in the slightest degree to throw any doubt on the accuracy of it, but in order that one might ascertain a little more fully what is meant by the various clauses referred to.

(*Chairman.*) Would you look at this one (*handed*); if we do not accept it in this way we shall have to have an expert from every country. If you will just take Denmark, for instance, you will see how it is done.

(*Witness.*) That is a book I was unable to obtain. It is out of print.

(*Sir Lewis Dibdin.*) I have one; I will lend it you.

(*Mr. Rufus Isaacs.*) It may not be necessary, but the whole point of my question is this: when we are considering, as we shall have to, at a later time, the causes for divorce and separation in other countries as compared with our own, it does become necessary to have much more precise information than we have here. For example, here in this book one of the causes is malicious desertion; insuperable aversion. There must be something throwing a little more light on what is meant by those than the mere statement. My question was only intended to ascertain whether there was the means available by us from this to know what the documents are from which this is compiled.

40. (*Chairman.*) Yes, they are all put in, I think, are they not?—Yes.

(*Chairman.*) And they have been kept in a bundle together so that if you want to find out what any particular Code means, the Secretary will turn it up for you.

(*Mr. Rufus Isaacs.*) That was the whole object of my question.

(*Sir Lewis Dibdin.*) I do not think more detail does exist than "insuperable aversion." The terms are very vague.

(*Witness.*) I have only referred to the material —not to the statutes.

(*Mr. Rufus Isaacs.*) I have no doubt the words are used from the Code. The Secretary, as a lawyer, would have used the words.

(*Witness.*) I am using the words from the Blue Book.

(*Mr. Rufus Isaacs.*) Yes, and the same word would be used in the Code, but there may be something that will throw a little light on how those words are interpreted by the courts.

(*Chairman.*) Let us look at France and see what that says.

(*Mr. Rufus Isaacs.*) It does not use those words. I think No. 5 of "France" would. It is not such a good instance, because the words are not so vague, but at the same time "Condemnation of either to an " afflictive or degrading punishment."

(*Chairman.*) That is judicial sentence.

(*Mr. Rufus Isaacs.*) Yes, it means that simply, but there there is the Code, and one could find out.

(*Chairman.*) If we had a lawyer from each place——

(*Mr. Rufus Isaacs.*) I am not suggesting that.

(*Chairman.*) Might we take one—take Austria.

(*Mr. Rufus Isaacs.*) Yes, the same thing. That is one I gave as an instance: "Malicious desertion and " insuperable aversion."

(*Chairman.*) Let us see what the words are in the two places we get that from. One is the term of the Act of Parliament and the other is the American book.

(*Witness.*) Is that Protestants, Mr. Isaacs?

(*Mr. Rufus Isaacs.*) Yes, the words used are: "Insuperable aversion," as both parties request a divorce. Those are the words in the Blue Book.

41. (*Chairman.*) What is the American book. Just take Austria, as it is stated there?—It is in groups instead of separating, as the Blue Book does, the religions into separate heads, Greeks, Protestants, and so on. It groups them all under non-Catholic, and then it gives "insuperable aversion"; not necessarily a matter on account of which both parties desire a dissolution of the marriage.

42. This is only a sort of guide. Might I ask, in framing this epitome, have you noticed that most of the foreign countries require the tribunal, prior to the suit proceeding, to use its utmost efforts to effect a reconciliation?—That is so.

43. (*Judge Tindal Atkinson.*) In the statistics we have is it shown what the percentage of divorce to marriage is?—Sir John Macdonell will deal with that.

44. (*Lord Guthrie.*) Might I ask, Mr. Secretary, in the statistics for England they are brought up to 1908. Are the 1909 not available?—I do not think so.

45. Not yet?—No; Sir John will be able to give your Lordship an answer to that question.

The following is the analysis prepared and put in by the witness:—

ANALYSIS OF DIVORCE LAWS.

(a) *European.*

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Austria	*Catholics*	- - - - - -	Separation only.
	Protestants. 1. Adultery 2. Malicious desertion. 3. Condemnation for crime 4. Immoral habits 5. Infectious diseases 6. Illtreatment, threats, or serious vexations. 7. Unconquerable aversion	(*a*) Recrimination. (*b*) Express or tacit renunciation. - - - - - -	As to 7, after separation has been tried and found useless.
	Jews. 1. Mutual consent 2. Adultery of wife		
Belgium	1. Adultery of wife. 2. Adultery of husband if he shall have kept his mistress in the common residence. 3. Violence endangering life (*excès*). 4. Cruelty (*sévices*) 5. Grave indignities (*injures graves*). 6. Sentence of one of the parties to an infamous punishment involving loss of civil rights. 7. Mutual and unwavering consent of the parties expressed in manner prescribed by law.	Reconciliation subsequently to— (*a*) Cause of action. (*b*) Petition.	The State Attorney watches every case, and may contest same if so disposed. Separation permitted on same grounds as divorce, but when the separation of persons pronounced for any other cause than that of adultery of wife shall have continued for three years, the respondent may demand divorce, which must be granted unless petitioner agrees to cessation of separation.
Bulgaria	1. Adultery 2. Cruelty. 3. Threat or designs against life of consort. 4. Absence of husband for four years— (*a*) if whereabouts unknown; (*b*) if whereabouts known, without sending wife means of support. 5. Impotence. 6. Insanity, epilepsy, idiocy, or syphilis supervening after marriage, and incurable. 7. Sentence to severe or degrading punishment for theft, fraud, embezzlement, or homicide. 8. Unsubstantiated charge of adultery made by one against the other. 9. Unnatural crime of husband against wife. 10. Restraint on religious liberty. 11. Drunkenness— (*a*) if squandering property; (*b*) if leading dissolute life.	- - - - - -	Separation not allowed by law of the Orthodox Greek Church. Court must attempt reconciliation.

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Bulgaria—*cont.*	12. Abandonment of the husband by the wife or driving him from his home without sufficient grounds, followed by refusal for three years to live with him again.		
Denmark	(a) *Judicial.* 1. Adultery 2. Bigamy. 3. Desertion. 4. Impotence. 5. Leprosy and certain other diseases. 6. Absence for five years where presumption is absentee dead. 7. Imprisonment for life.	(*a*) Recrimination (*b*) Condonation. (*c*) Connivance.	Especially in reference to 1. As to 3, if *malicious*, after three years; if *simple*, *i.e.*, absence without known or apparent cause, after seven years.
	(b) *Administrative.* 1. Insanity 2. Separation for three years. 3. Sentence of three years.		Separation granted by Minister of Justice, usually on grounds for divorce, and he may subsequently grant divorce.
France	1. Adultery 2. Violence endangering life (*excès*). 3. Cruelty (*sévices*). 4. Grave indignities (*injures graves*). 5. Condemnation of either to an afflictive or degrading punishment.	(*a*) Connivance* (*b*) Condonation.* (*c*) Reconciliation. (*d*) Death of one before decree.	The prosecuting attorney may contest every case. Separation permitted, but where separation is continued for three years, converted *as a right* into divorce on application of either party. (Code Civil, Art. 310.) The Court may order that the case be heard in camera. Publication in press of divorce trials prohibited under penalty of fine from 100 to 2,000 francs. (Code Civil, Art. 239.)
German Empire.	(a) *Absolute.* 1. Adultery 2. Bigamy. 3. Crime against nature. 4. Attempt on life. 5. Malicious desertion for one year. 6. Insanity of three years' duration, destroying intellectual communion between parties, and holding out no hope of recovery.	(*a*) Connivance of plaintiff as to 1, 2, 3 (a). (*b*) Condonation. (*c*) Delay of over six months after knowledge of offence. (*d*) Lapse of 10 years from offence.	Separation allowed on same ground, but on demand of defendant decree of divorce *must* be granted. Public Prosecutor must be officially notified—may intervene. Cases tried in camera on motion of one party or by order of court for special reasons. The Court is to attempt reconciliation.
	(b) *Discretionary.* 1. Grave violation of marital duties. 2. Dishonourable or immoral conduct rendering martial relations so strained that continuance of marriage ought not to be expected.		
Greece	(a) *Husband's Petition.* 1. Adultery 2. Attempt on life of husband. 3. Non-disclosure of knowledge of plot against his life. 4. Non-disclosure to husband of knowledge of conspiracy against Sovereign.		Bishop must attempt reconciliation; on failure, sends case to civil court.

* *See* p. 357 of the Special Reports of the Census Office—Marriage and Divorce 1867–1906.

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Greece—*cont.*	5. Without husband's consent, staying the night at another house except the house of parents. 6. Without husband's consent, attending races, theatres, or sports. 7. Against husband's wish, attending dinners or bathing in the company of men. 8. Procuring abortion. (b) *Wife's Petition.* 1. Conspiracy against the Sovereign or, being aware of one, not denouncing it. 2. Attempt on life of wife or, being aware of plots against it, not disclosing them to her or undertaking to prosecute. 3. Endeavouring to procure adultery by her. 4. False charge of adultery. 5. Adultery in the home. 6. Persistent adultery in the same town. 7. Impotence.		
Hungary	(a) *Absolute.* 1. Adultery 2. Crime against nature. 3. Bigamy. 4. Malicious desertion. 5. Attempt upon life or serious maltreatment endangering safety or health. 6. Sentence of death or five years' imprisonment. (b) *Discretionary.* 1. Wilful violation of marital obligations other than the above. 2. Attempt to induce a child of the family to a criminal act or immoral life. 3. Stubborn persistence in immoral life.	(*a*) Connivance (*b*) Condonation. (*c*) Certain periods of limitation.	Separation permitted. Court must make attempt at reconciliation, and before granting divorce, order a separation unless no chance of reconciliation. Representation by counsel compulsory.
Ireland			Separation only.
Italy			Separation only.
Netherlands	1. Adultery 2. Malicious desertion for five years. 3. Sentence to imprisonment for at least four years. 4. Grave injuries or ill-treatment endangering life.	(*a*) Condonation (*b*) In case of 2, return of absentee before decree.	Court must attempt reconciliation. All suits heard in camera. Public Prosecutor must be present. Separation permitted, which after five years, if both parties wish, may be converted into divorce.
Norway	*Note.*—Since the preparation of this synopsis, which gave the former law, the Commission has received a copy of a new law of 20th August 1909, a translation of which made by Lord Salvesen, and of an explanatory letter obtained by him, will be found in Appendix V., page 43.		
Portugal	*See* Foreign Office Return for law of 1910, Appendix XXII., page 152.		

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Roumania -	1. Adultery - - - - -	- - - - - - -	No separation.
	2. Abuse, injuries, or ill-treatment.		
	3. A sentence to hard labour or to imprisonment.		
	4. Attempt on life of other or failure to warn other of such attempt by third party.		
	5. Mutual consent of parties in manner prescribed by law.		
Russia -	*Russian Church and Old Believers.*		
	1. Adultery - - - - -	(*a*) Recrimination - - -	No separation.
	2. Bigamy.	(*b*) As to 3, only after three years of marriage.	Grounds 1, 3, 4, and 5 apparently apply to all Russian citizens.
	3. Impotence.	(*c*) Under 5, right of action lost by accompanying guilty party into exile.	
	4. Absence for five years without news.		
	5. Condemnation to loss of civil rights, involving deportation.		
	*6. Entrance of both parties into a religious order where no children needing care.		
	*7. Conversion of a non-Christian to the Russian Church, provided he or his consort desires the dissolution.		
	Lutherans.		
	1. Adultery.		
	2. Concealed loss of virginity of wife before marriage.		
	3. Attempt to poison.		
	4. Five years' desertion.		
	5. Incompetence and repugnance to marital intercourse.		
	6. Refusal to fulfil conjugal duties.		
	7. Incurable infectious disease.		
	8. Madness.		
	9. Depravity of life.		
	10. Cruelty and offensive treatment.		
	11. Attempted dishonour.		
	12. Unnatural propensities.		
	13. Grave crimes involving sentence of death or a punishment in substitution.		
	14. Penal exile.		
	Jews.		
	Granted by the Rabbi on a large number of grounds based on Mosaic law. Even those usually enumerated cannot be treated as exhaustive.		
Scotland -	1. Adultery - - - - -	(*a*) Connivance - - -	Judicial separation for 1 and 2, and statutory habitual drunkenness.
	2. Malicious desertion for four years.	(*b*) Condonation.	
		(*c*) Collusion.	Lord Advocate may intervene.
Spain -	- - - - - - - -	- - - - - - -	Separation only.
Sweden -	(a) *Judicial.*		
	1. Adultery - - - - -	(*a*) Recrimination - - -	Separation permitted.
	2.—(*a*) Illicit intercourse with a third party after betrothal.	(*b*) Connivance.	
		(*c*) Condonation.	
		(*d*) Collusion.	
	(*b*) Intercourse of wife with third party before betrothal.	(*e*) As to 1, delay of over six months after knowledge of offence.	

* *See* p. 384 of the Special Reports of the Census Office—Marriage and Divorce 1867–1906.

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Sweden—*cont.*	3. Malicious desertion for one year, provided absentee has left kingdom. 4. Absence without news for six years. 5. Attempt on life of petitioner. 6. Bodily incapacity. 7. Concealment of an incurable contagious disease. 8. Sentence of life imprisonment. 9. Insanity of three years' duration and pronounced incurable. (b) *Royal Prerogative.* 1. Condemnation to death or civil death. 2. Condemnation for gross offence or one involving temporary loss of civil rights. 3. Imprisonment for at least two years. 4. Prodigality, drunkenness or violent disposition. 5. Irreconcilable aversion and hate lasting after one year's separation.	(*f*) As to 9, conduct (*e.g.*, cruelty) conducing or aggravating. - - - - - - - -	(b) not necessarily exhaustive.
Switzerland	1. Adultery - - - - 2.—(*a*) Attempt on life. (*b*) Cruelty (*sévices*). (*c*) Grave indignities (*injures graves*). 3.—(*a*) Infamous crime. (*b*) Base conduct rendering married life unbearable. 4. Malicious desertion for two years. 5. Insanity rendering married life impossible, and, after three years' duration, pronounced incurable. 6. Conduct rendering married life unbearable.	(*a*) Connivance - - - (*b*) Condonation. (*c*) Action not brought within six months of knowledge of offence. In any event five years' limitation.	Separation permitted, but one of the parties can demand a divorce, or an ending of the separation, if reconciliation does not take place (as of right after three years). As to 4.—Action can only be brought after six months from decree calling on absentee to return.

(b) *Colonies other than Canada.*

Cape Colony	1. Adultery - - - - 2. Malicious desertion. 3. Unnatural crime. 4. Perpetual imprisonment. 5. Absence without news for five years. 6. Refusal of marital rights.	(*a*) Collusion - - (*b*) Recrimination. (*c*) Condonation.	Separation allowed.
Natal -	1. Adultery - - - - 2. Malicious desertion for not less than 18 months before suit.	- - - - - -	Attorney-General may intervene. Separation allowed.
Newfoundland.	None.	—	—
New South Wales.	(A) On husband's petition:— 1. Adultery. (B) On wife's petition:— 1. Adultery (*a*) if husband domiciled in the colony when the suit is instituted; or (*b*) such adultery is incestuous or is coupled with (i) bigamy, or (ii) cruelty, or (iii) desertion without reasonable cause or excuse for three years or upwards.	As in England - -	Separation allowed.

Country.	Causes.	Defences in addition to Traverse.	Remarks.
New South Wales—*cont.*	(C) By person domiciled three years:— 1. Malicious desertion for three years. 2—(i) Husband during three years habitual drunkard, and has left wife without means of support, or has been guilty of cruelty. (ii) Wife during three years a habitual drunkard, and has neglected domestic duties or rendered herself unfit to discharge them. 3. Imprisonment for three years under commuted sentence for a capital crime, or under sentence of seven years or upwards. 4. Conviction for attempt to murder or inflicting grievous bodily harm. 5. Repeatedly assaulting and cruelly beating. 6. Husband been in last five years frequently convicted; has had three years in aggregate, and has habitually left wife without means of support.		
New Zealand	(A) On petition of person domiciled two years:— 1. Adultery - - - 2. Malicious desertion for five years. 3.—(i) Husband habitual drunkard for four years, and has left wife without means of support; or has been guilty of cruelty. (ii) Wife a habitual drunkard for four years, and has neglected domestic duties and rendered herself unfit to discharge them. 4. Sentence for seven years for attempt on life of petitioner or child. 5. Murder of child of petitioner or respondent. 6. Lunatic for 10 years and unlikely to recover. (B) Wife may also petition on grounds same as in England.	(*a*) Petitioner's conduct conducing, but no recrimination. (*b*) Connivance. (*c*) Condonation. (*d*) Collusion.	Separation allowed. Court may hear in chambers. Court may forbid publication of reports; any attempted evasion contempt of court. Attorney-General or Solicitor-General may intervene.
Queensland -	Substantially the same as England.	- - - - - - -	Court may hear in chambers. Court may prohibit publication of reports. Separation allowed.
South Australia.	Substantially the same as in England.	(*a*) Connivance. (*b*) *Uncondoned* adultery of petitioner. (*c*) Condonation. (*d*) Unreasonable delay. (*e*) *Uncondoned* cruelty. (*f*) Malicious desertion. (*g*) Neglect or conduct which has conduced.	Separation allowed. These defences, except (*a*), not absolute but discretionary.

Country.	Causes.	Defences in addition to Traverse.	Remarks.
Tasmania	Substantially the same as England.	- - - - - -	Separation allowed.
Victoria	(A) As in England - - - (B) Anyone domiciled two years:— 1. Adultery of husband, if— (*a*) in common home; or (*b*) aggravated by conduct or circumstances; or (*c*) repeated. 2. Desertion for three years. 3—(i) Husband during three years habitual drunkard, and has left wife without means of support; or has been guilty of cruelty. (ii) Wife during three years a habitual drunkard and has neglected domestic duties or rendered herself unfit to discharge them. 4. Imprisonment for three years under commuted sentence for a capital crime, or under sentence of seven years or upwards. 5. Conviction within one year previously for attempt to murder or inflicting grievous bodily harm. 6. Repeatedly assaulting and cruelly beating petitioner. 7. Husband been in last five years frequently convicted, has had three years in aggregate and has habitually left wife without means of support.	Petitioner's own habits or conduct inducing or contributing to the offence complained of.	Separation allowed (*semble*). These defences are discretionary.
Western Australia.	Same as in England - -	——	——

(c) *Canada.*

Legislative divorce, *i.e.*, by Act of Canadian Parliament in Quebec, Ontario, Manitoba, and North-West Territories.

Nova Scotia.—Court for divorce and matrimonial causes similar to that in England. Grounds: adultery, impotence, cruelty, consanguinity.

New Brunswick.—Court for divorce and matrimonial causes similar to that in England. Grounds: adultery, impotence, consanguinity. (No decree on ground of adultery to affect legitimacy of issue.)

British Columbia.—Supreme Court has assumed all powers of English Divorce Court.

Prince Edward's Island.—Court composed of Lieutenant-Governor and five or more members of his Council. Grounds: adultery, impotence, consanguinity.

Mr. Alfred Musgrave called and examined.

46. (*Chairman.*) You are one of the registrars of the principal Probate and Divorce Registry?—Yes.

47. Although you are not the senior, and Dr. Pritchard is, I think; you have in fact been a longer time in the registry, though not a longer time a registrar?—Yes.

48. You have practically spent your life in the registry?—The greater part of it.

49. That is since 1872?—Yes.

50. Has it been one of your duties since 1893, when you were appointed registrar, to tax divorce bills of cost?—Yes.

51. Have you caused search to be made among the taxed bills of costs to see if you could classify them at all?—Yes, I have looked at hundreds of bills of costs.

52. Have you found you could not classify them?—No, I could not.

53. Are you able to give us any rough idea of the costs in undefended cases?—In simple undefended cases the costs would vary as a rule from 40*l.* to 60*l.*, so far as the taxed costs are concerned, as I only know the result of taxation where bills come before me as a taxing master.

54. Where the co-respondent has been condemned?—Where the co-respondent has been condemned; or where the husband has been condemned when the wife is the petitioner.

55. Could you separate that at all into London and country?—Not with regard to sample bills. I can give a sort of general statement as to what the extra costs of country witnesses coming up to London are.

56. Perhaps we can get it in that way. What is a rough estimate of the ordinary cost?—That I could not give in figures, because it depends on the nature of the witnesses. The witnesses in London or some place near London might be expensive witnesses, like a doctor or any professional witness.

57. But, taking it roughly, what is the ordinary average cost of an undefended case in London?—That I cannot give as an average because they vary so extremely; they go from 80*l.* up to 300*l.* or 400*l.*

58. But can you give anything like an approximate minimum?—The minimum might be very slightly in excess of the cost of an undefended case, about 50*l.*, I should say.

59. I was asking about an undefended case?—Oh, undefended cases? I have brought a sample of an extremely small case which was taxed down to 28*l.*; that is the smallest case I could find, which is not a pauper case.

60. What is the sort of average minimum, would you say?—The average minimum of an undefended case would be about 40*l.* to 45*l.*

61. That is a London case?—Yes.

62. Can you tell me how that compares with a case, say, where the witnesses come from Lancashire or Yorkshire?—Assuming that the witnesses were exactly the same class of witnesses as in that case, any extra cost of coming from Lancashire would be the travelling expenses and the hotel expenses for two or three days; the other charges would be the same.

63. Are you able to put that into figures at all as compared with the 40*l.* or 45*l.* you have just mentioned?—I should think, as nearly as possible, it would increase it by 12*l.* or 13*l.*; because the 45*l.* case I have mentioned was a case where they were not expensive witnesses to start with in London; therefore the extra costs of those witnesses coming to London would be chiefly the travelling expenses, and the additional costs of hotel expenses, which would not be so great.

64. If you get doctors from the country it would be more expensive?—Then the extra cost of staying in London for the trial would make more difference.

65. In pauper cases, I believe, only costs out of pocket are allowed?—On taxation we should only allow costs out of pocket and some allowance for clerical work which they get done; not as solicitors' charges, but a few guineas—four or five guineas.

66. Could you give us a comparison between a pauper case and the undefended case which you mentioned of a minimum of 40*l.* to 45*l.* in a case in London?—The allowance would only be some 9*l.* or 10*l.*

67. 9*l.* or 10*l.* less?—No, altogether. There would be a sort of charge for clerical assistance,—about four or five guineas—and the costs out of pocket for the witnesses, which would be small coming from London; it would not be above 12*l.* altogether.

68. You mean that a pauper case could be got through?—So far as one is able to judge from any claim put forward on taxation. They may have paid something themselves, which they do not mention to one.

69. But you mean a pauper case, if it was a London one, would be got through for something like 12*l.*?—Unless there is some private contract with a solicitor for payments to him which they cannot claim from the other side.

70. You are judging from the taxation?—From the taxation. The solicitor cannot obtain anything on taxation.

71. (*Mr. Rufus Isaacs.*) Is it 10*l.* to 12*l.*? You said 9*l.* to 10*l.* first?—It all depends on the nature of the witnesses. If the witnesses are cheap witnesses, I should say about 10*l.* in London.

72. (*Chairman.*) In the country you would have to add the costs of the witnesses coming?—The costs of the witnesses; and in London, though it is a pauper case the witness might be a doctor, and then it would mean a heavier fee.

73. (*Lord Guthrie.*) That is exclusive of counsel's or solicitor's fees?—No, because neither solicitor nor counsel can charge on taxation; that is on the assumption that the pauper sues himself.

74. But they do, in fact, charge in the divorce causes—solicitor and counsel?—I do not know anything about it.

75. (*Chairman.*) You are speaking entirely of what is taxed?—I am speaking entirely as taxing officer.

76. Then may I ask this: what is the qualification of a pauper?—Before he is allowed to sue as a pauper?

77. Yes?—That goes up to about 30*s.* a week; anything under 30*s.* It has been allowed, I think, up to 32*s.* in special cases. The general line is 30*s.* a week.

78. In that case they have to file a case for opinion of counsel and get a certificate that it is a proper case?—Yes.

79. Now, you have before you some bills which you can produce to show us what the charges are?—Yes, I have brought four or five undefended cases. There is one where the witnesses come up from Yorkshire, and there is one near London; and I have two or three defended cases, and the costs of the King's Proctor's intervention where there is no opposition and the petition is dismissed on motion; and also where the case is fought out.

80. Could you just take the effect of them, shortly?—The result is that they do not give any general average at all, as far as I can make out. They rather clash. The first one I have is an undefended case where the witnesses come from Yorkshire, some from Rotherham, and some from Sheffield, but there are very few, as it is an undefended case, and the costs are taxed at 56*l.* 2*s.* 1*d.*

81. Then the next one—we can look at them after?—Then the next one is an undefended case where the witnesses are in London, and the costs are taxed at 42*l.* 3*s.* 11*d.* Then there is a case of Smith *v.* Smith and Lumsden—also an undefended case—taxed at 46*l.* 16*s.* 1*d.* That shows the sort of average of small cases.

82. (*Mr. Brierley.*) From London?—Yes, that is London. Then there was the small case I mentioned of Shepherd *v.* Shepherd and Taylor, taxed at 28*l.* 16*s.* 8*d.*; and there is a case of Savage, where the witnesses are near London; and the costs are taxed at 68*l.* 9*s.* 3*d.*

83. (*Chairman.*) Undefended?—Undefended. Some of the costs are caused by other matters, not merely by the costs of hearing. If there are alimony proceedings or other applications that are pending apart from the trial.

84. Perhaps we can study these bills ourselves. Then you said something about defended cases?—I have one or two defended cases, only I cannot give any average of the costs in defended cases because they vary so extremely. There is a bill of Scott *v.* Scott which is taxed in two parts; that is, that the first bill is taxed up to setting down, which they are entitled to do (the wife's costs), and the costs of the hearing; and the first bill is 43*l.* 2*s.* 9*d.*, and the second bill, 183*l.* 1*s.* 9*d.*

85. Can you give us any idea of the range of limits of the ordinary class of defended cases?—Not as limits at all.

86. They vary too much?—They vary so extremely; from any sum—from 70*l.* they may go up to 500*l.*

87. So if you have both sets of witnesses brought up from the country and it is defended, it would be very costly?—If there are a large number of witnesses; it depends on the number of witnesses. If there are only one or two, it does not make much difference.

88. But if there are witnesses on both sides?—If there are a large number of witnesses on both sides; then it means if the cases are in the list one or two days—it frequently happens, in London, cases are not reached—and if a case comes from the country that makes a large expense.

89. Then you said you had a case where the King's Proctor intervened?—I have two bills of the King's Proctor; one case where the intervention is not opposed and the petition is dismissed on motion. Those costs are practically a set scale of costs with the exception of the item of instructions for plea, which takes the place of instructions for brief on an ordinary taxation. That varies according to the nature of the case and the number of the people they have to see and what they have to investigate. But, apart from that, it is a scale charge which is practically printed now and goes through as a matter of course.

90. What does it come to?—This bill here is taxed at 34*l.*, and that includes an item of 12 guineas for the instructions for plea, and two guineas and 1*l.* 9*s.* for drawing the case which they have to submit to the Attorney-General. Those two items vary—the case for the Attorney-General and the instructions for plea.

91. That is an intervention which is not contested?—Which is not contested. Then I have another one where the plea was contested, which amounts to 148*l.*; it is taxed at that. There is nothing very special about it.

92. Can we pretty well judge for ourselves from those bills what the kind of expenses that have to be incurred are?—It will give some idea, but it will not give a very good average of figures.

93. You say they cannot be averaged?—I do not think they can be got satisfactorily. I could make out a sort of imaginary bill of costs, if it is of any use, by taking the charges which must occur in every case, and then allowing charges for London witnesses and what the same would be some distance off; but it would be purely imaginary.

94. Shall not we find most of that in those bills?—Not to make a comparison.

95. These are taxed bills?—Yes.

96. It does not show what the parties have spent outside?—It does not show what the parties have spent outside.

97. Then there is another matter which you do not go into in your proof, but you can give us some information about it. If a suit has to be started, I think it is started by petition and citation?—Yes.

98. Has that to be filed in London?—That has to be done in London.

99. Supposing the petitioner lives in Yorkshire, how is he to do that?—Either by the country solicitor or by coming up himself to London.

100. Has he any power to do it except he comes himself?—No.

101. Or has his solicitor to do it?—He must come himself to file the petition. Afterwards he may give an address for service in London, and he can get some friend or agent to come afterwards and act for him, but he must have an address for service in London, and he must come himself in the first instance.

102. Or send his solicitor?—Or his solicitor.

103. No unprofessional person?—Not in the first instance.

104. Then when he has filed it, he files it with an address for service—for anything the other side chooses to serve him with?—That has to be within a three-mile radius from London.

105. Is that an address of himself or a solicitor?—It need not be either. It is an address where papers will reach him, and which can be forwarded to him.

106. Supposing he has to appear on a summons?—He has to come himself then.

107. Or a solicitor?—Or a solicitor.

108. Is there any other difficulty that occurs to you at the moment as to persons in the country, except the expense and that somebody must do it for them or they must do it themselves?—With regard to facilitating business, do you mean?

109. Yes?—It occurred to me it might be of some assistance if in poor cases their evidence might be taken by way of deposition before some official, such as a county court registrar or someone else.

110. But before you get to that, is there any suggestion you have to make as to a poor person in the country getting over the difficulty of personal attendance in London or by a solicitor on a summons or the filing of the petition?—I do not see how that can be done in London, because we could not recognise unknown people coming to represent them. If they are not on the record acting as their agent they must come themselves. I do not think we could deal with anybody else.

111. (*Judge Tindal Atkinson.*) Would there be any objection or difficulty in the proceedings in certain cases being commenced in the county courts—the petition and the citation?—It is only a question about uniformity of practice, whether it is desirable from that point of view.

112. That could be provided for by rule. Would it get over the difficulty of the person having to attend in person or by a solicitor in London if he commenced proceedings in that way?—No doubt it would in some cases; but there are some cases where the witnesses are not all in one place; that is, some witnesses in one part of the country and other witnesses in other parts.

113. I was not referring to the examination of witnesses, but the petition has to be filed?—Of course, it would be easier for the petitioner to be able to do it in the place where he lived.

114. Do you see any objection to it?—The only objection I see is the question of uniformity of practice.

115. But that could be dealt with by uniform rule. If the rules are uniform they must be adopted?—They are not always construed and acted upon quite uniformly.

116. Can you tell me how many pauper cases in a year you suppose you have?—Oh, very few.

117. Would they exceed 25?—No.

118. Would they exceed 10?—I should have said about 15 or thereabouts; about that.

119. Now the costs which are allowed in the Divorce Court are quite uniform. There are not different scales according to the position of the parties. I mean, if parties are extremely wealthy ——?—Then the fees are just the same if there are any fees payable at all—if they are not suing as paupers.

120. And the solicitors' charges?—The solicitors' charges are the same.

121. (*Lord Guthrie.*) Can you give any idea of what the necessary outlay would be, in addition to the taxed costs you mentioned in the London undefended average minimum of 45*l.*; can you give an idea of what the necessary additional outlay would be for solicitors' charges and counsel's? — There need be no extra charges as an actual necessity in very small cases; but directly you get into a case which is not so simple, then there are sure to be some extra costs; conferences with counsel, and so on—items not allowed on taxation as between party and party. But they are not so likely to arise.

122. (*Mrs. Tennant.*) Is the pauper qualification based on the average earnings over a certain period or the rate of earnings at the particular time?—It is on what we may assume they are going to earn at the present time. It may be based on what they have had the last few months, or in the case of a person who is at the present moment out of work, we ascertain what his average earnings are while he is at work during the year. That would be based, perhaps, on the last two or three years. But if he is actually in employment earning so much a week it would be based on his present means.

123. But regard is had to the fact of unemployment for a certain period?—Then we should go over, say, three years and ascertain what his average earnings are, because generally he is in some employment at times, though not the whole year. He is probably engaged so many months in the year, and we should ascertain what he earns when employed and charge him with the average earnings.

124. (*The Earl of Derby.*) I understand you that the cheapest at which a pauper case could be taken would be from 10*l.* to 12*l.*?—Yes, about that.

125. And that would be materially increased if it were a Lancashire case?—Yes.

126. Would it be increased by about the 12*l.* you mentioned previously as being the difference between an average undefended case in London and an average undefended case from Lancashire?—Not necessarily quite so much, because I was taking the very lowest

pauper case at about 10*l.*, and if there were only two witnesses coming up it would not make quite so much difference. It depends on the number of witnesses.

127. May I take it the cheapest undefended pauper case coming from the north counties would be about 20*l.*, say from Lancashire or Yorkshire?—I should say it must be about 4*l.* more; from 15*l.* to 20*l.*, I should think.

128. That would have to be found by the man who under no circumstances had more than 30*s.* a week, and who might be, as a matter of fact, absolutely out of employment and having no wages at that moment?—Yes.

129. He could not, under any circumstances, get a divorce unless he was prepared to put down 15*l.*?—I do not think so—from the country.

130. (*Sir George White.*) Is your evidence with regard to paupers quite distinct? Do I understand 15 is the final total number of pauper cases in the whole country?—I have not looked out this particular question for certain. I can ascertain the exact amount on an average if it is required. I should have put it at about that.

131. Fifteen for the whole country?—Yes; I can furnish that more accurately if it is required,

132. (*Chairman.*) Could you supply us with the exact number and costs of each pauper case that was heard last year that you have taxed?—That have been taxed. There are a great many pauper cases that are never taxed. The items are so small that they are not always taxed.

133. Well, those that are taxed; could you make a return of the taxed pauper cases——

(*The Earl of Derby.*) Might I ask that it should be said where each case comes from?

(*Witness.*) Whether it is London or country?

(*The Earl of Derby.*) Yes; and, if possible, saying the counties.

(*Witness.*) Shall I take it for the last three years?

(*Chairman.*) Yes.

(*Witness.*) Within the last year there may have been only one or two pauper bills taxed.

134. (*Mr. Rufus Isaacs.*) Mr. Musgrave, in the bill you have spoken about—the pauper bill of 9*l.* to 12*l.*—would you tell me, first of all, the pauper would have to get a certificate from counsel that he has a good case before he is allowed to sue *in formâ pauperis*, has he?—Yes.

135. Then he has to make an affidavit?—Then he has to make an affidavit.

136. Is it merely an affidavit of what his earnings are, or what his property is?—It is his earnings, because he has to swear he has no other means than what he sets out, and what he sets out is practically his earnings and also that he is not worth 25*l.*

137. Is there any limit as to that; has it been discretionary?—It has been discretionary, but we have acted upon it according to instructions from the judges as to what extent we are to go as a limit.

138. When he submits that case then he must have the evidence either which he has obtained or can obtain?—No, he does not submit a statement of witnesses; he sets out his story and swears to the truth of it: that is also sworn to in his affidavit, and the opinion of counsel is to the effect that if the case is proved it justifies the petition for divorce.

139. Then he has to obtain the evidence of it?—That is afterwards; he produces his witnesses.

140. He must obtain the information first before he can submit the case?—Undoubtedly he does, but he does not submit the proofs of witnesses.

141. No, but he must submit some idea of what evidence he can call to establish his case, must he not?—He makes a statement of what has happened.

142. If all he has to do is to say (assuming the case of a man who brings a petition against his wife on the ground of adultery) that he believes or knows that his wife has committed adultery and he wishes to institute proceedings against her, it seems very useless to have to ask counsel's opinion on that?—No, it goes a little further; he sets out the story that so-and-so has been found at a certain place, and so on.

143. That is what I meant?—But it is not actually the proof.

144. No, I did not mean that. What I mean is he must have some idea, before he submits his case to counsel, as to how he is going to prove the case?—Yes, certainly.

145. He must have some idea as to what the particulars are (I do not mean in detail) of the case for which he is asking for a certificate. The point I want to direct your attention to is this: does not the mere fact—I will not say always, but in many instances—of the pauper submitting his case to counsel show that he has had to spend some money for the purpose of getting the information to be submitted?—Not necessarily.

146. I agree, not necessarily?—It is a question of a witness. I am taking a case where there is no difficulty in getting one or two witnesses to prove his case; in other cases it means large expenses; but if the witnesses are ready to come forward there is no expense, and he has done it himself probably. He has not incurred any expense in getting the evidence.

147. I agree with that, and I said not necessarily; but there are instances, and there are many instances?—Certainly, there might be great expense.

148. What occurs to me is that the difficulty is in these cases not so much the putting before counsel the simple case, but the pauper's difficulty is to obtain the evidence of the adultery of his wife, assuming it is not taking place in the same town, or that he has not some confession?—Certainly, that is so.

149. And before he submits his case to counsel, supposing the wife has left him—is not living in the same town—he has to have some information, and to have obtained some information as to how his wife is living before he can submit this case for opinion as to whether he can obtain a divorce?—Certainly; but what happens in most cases is that he goes himself and makes inquiries, or gets a friend to do it, without employing a solicitor, and he gets his information before he gets it put on paper at all; that is what happens sometimes.

150. That is what occurs to me, that in many cases his difficulty is to obtain information first, and that that involves expense; so that unless he is in a position to spend the money to obtain the evidence he cannot even go through the initiatory stage of submitting the case to counsel?—In some cases they can get the evidence without spending money, and sometimes they cannot.

151. Would you tell me; in the 10*l.* or 12*l.* you have spoken of, is there anything in the nature of a court fee included in that?—No, nothing.

152. Would that include such things as stamps on affidavits?—No, they are relieved from all court fees.

153. They are relieved from stamping affidavits?—Yes.

154. Now, with reference to the other case—the 40*l.* to 60*l.* undefended case—can you tell me how much of that 40*l.* or 60*l.* approximately would represent court fees?—Court fees in an ordinary case do not amount to more than about 7*l.* all together.

155. When you say court fees, does that include stamps for affidavits?—Yes, all fees.

156. So that out of the 40*l.* to 60*l.* approximately 7*l.* would cover everything the court receives?—Yes. Of course, in a case where there are several outside applications and summonses there are a few additional fees, but then the costs in that case would be more than 45*l.* But taking an ordinary case of 45*l.* the fees would not be more than about 7*l.*

157. Are these undefended cases you have spoken of cases in which there has been much expenditure in obtaining evidence?—Not great; otherwise the allowance for instructions for brief would be greater.

158. Would that be so if it were with reference to obtaining evidence, because once the evidence is obtained it is simple enough to put it to counsel?—But the item for instructions for brief includes getting and obtaining the evidence.

159. I want to ascertain this from you. In a bill of costs, from 40*l.* to 60*l.* of an ordinary undefended case, would there be any charges, for example, allowed for the employment of detectives?—As a rule the payments to detectives are not allowed as such, but reasonable

allowance for making inquiries and getting up the case is taken into consideration in instructions for brief.

160. So that they get in a different form part of what they spend in the matter of detectives?—In the ordinary practice.

161. But then that would go to the solicitor, would it not?—The fee of the instruction for brief?

162. Yes?—But it comes to the same thing. The payments to the detectives are made by the solicitor on behalf of his client, and therefore he recovers in the bill of costs part of this work.

163. It may not necessarily be the same, but I do not want to ask you further about that. What I did want to ascertain from you, if you could tell me, is what proportion of the 40*l.* to 60*l.* would be represented by the cost of obtaining evidence? It seems simple enough when you have witnesses A, B and C to call. You know A, B, and C's whereabouts, and they have to be brought up to prove a simple case; but the difficulty, as a rule, is in ascertaining the facts; and I want to know what proportion of the 40*l.* to 60*l.* represents the cost of ascertaining the facts before you get to calling the evidence?—You see this bill that is taxed here at 46*l.* in the case of Smith, the amount allowed for instructions for brief is five guineas; the instructions for brief include the expense the solicitor is put to in getting up the evidence.

164. Well, of course, there may be a great deal more money than that spent in employing detectives, for example?—Yes, but in this case, presumably, there was not much money spent; I suppose it was all easily obtained. If there had been a great deal of money spent on detectives more would have been allowed on the instructions for brief.

165. But it does not occur to me the proportions would be worked out in that way unless you do know what the expense has been of obtaining the evidence and that; I suppose you would not know?—Well, it is all set out when the item is considered for instructions for brief. The solicitor always wants to get all payments to detectives allowed, therefore it is always considered what is the fair amount to allow as between party and party in getting the evidence before the court.

166. But you say your experience would show this, would it not, that there are cases in which very large sums of money have been spent?—Oh, undoubtedly.

167. Which come before the court as undefended cases, because by reason of the expenditure of the money the evidence has been got which makes it impossible for the respondent to defend?—Certainly.

168. Therefore, though it comes forward as an undefended case, that gives no idea of the actual expense that has been incurred in obtaining the evidence?—I did not say all the undefended cases were low bills. I was only asked to deal with the small cases. An undefended bill might be 200*l.* or 300*l.*

169. I was not complaining; I was trying to obtain the information from you, who have so much more knowledge and experience of it, that we may have it before us?—Oh, it may be that an undefended bill is very large owing to a great deal of expense having been incurred in getting the evidence; but in most of these cases I have mentioned I have assumed there is not very much difficulty, that they are rather simple cases.

170. Those would be the simplest?—Yes, the simplest cases.

171. (*Mr. Spender.*) I expect this has been asked before I came in, but are any steps taken to recover costs from the divorced parties in these pauper cases? Supposing a wife brings a successful petition and the husband can pay, is there attempt made to make him pay?—There are some bills brought in, but we have so few pauper cases altogether, and all the pauper cases do not bring in a bill of costs, but a bill is brought in sometimes and in that are allowed out-of-pocket expenses, with a few additional charges, and the pauper is entitled to get an order to recover the amount allowed.

172. If it is a clear case, and supposing there is something to be recovered, they might spend on the fair chance of getting recovery?—Yes, they are entitled to get an order in respect of these out-of-pocket expenses.

173. And these costs include the costs of submission to counsel?—Yes, they are entitled to include everything.

174. (*Chairman.*) Just one question to sum up. Is that case you mentioned of a very cheap pauper case exceptional, or are there several of them?—10*l.* to 12*l.*

175. Yes?—We have so few taxations of these costs, because a great many pauper cases are taken up by solicitors and we do not know whether they make any arrangements with the pauper or whether they do it all for nothing; we have no means of knowing. All we know is if it comes to a question of taxation the solicitor is not allowed to make any charge.

176. Are there many pauper cases?—No. I can look up those and get the exact figures.

177. In the course of the last three years?—The exact number of orders admitting paupers within the last two or three years.

178. It is only in those cases in which they think they can get something out of the other side that they come to tax?—Yes, I should imagine so. I can tell how many taxations in pauper cases there have been during the last three years.

179. And the amount of the bills taxed?—Yes.

180. (*Earl of Derby.*) May I ask one other question. Have you any evidence to show that the amount of the expenditure stops anybody from continuing with a divorce when once started; that they find the expense so great that they have to drop it?—There are cases in which they say so, but whether it is true or not I do not know.

181. Have you no evidence?—There are frequent cases in which they say they cannot go on owing to the expense, but sometimes there are other reasons which prevent it.

182. (*Chairman.*) Perhaps Lord Derby would forgive me for supplementing that. In a case where the husband is suing—we will say in one of these small undefended cases—the wife may take out a summons to stay until her costs are secured?—Yes.

183. Then he has not only to provide his own but hers?—Yes.

184. So if she is petitioner there may be an order to provide costs of her suing him?—Yes.

185. (*Mr. Rufus Isaacs.*) May I ask a question on that. When you say there are 15 suits by paupers during a year, can you tell us, are any of them by the wife?—Oh, yes, the wife is entitled to obtain an order.

186. I do not quite understand on what principle the wife is allowed to petition *in formâ pauperis*?—Before she is entitled to obtain an order she has to set out not only the means of herself but of her husband as well.

187. Supposing she brings a suit, and we will assume a case where the husband is earning 2*l.* a week, then the wife would not be allowed to sue *in formâ pauperis*?—No, she would not. We allow a little larger amount where the wife is suing as a limit; we extend it beyond 30*s.*; it has been carried up to nearly 2*l.*; 35*s.* or 36*s.* I do not think we have gone up to 2*l.*

188. Then if she sues, and on an affidavit it is shown her husband is in employment and earning about 2*l.* a week, and she has no means, she is not allowed to sue *in formâ pauperis*?—That is so.

189. Then she would have to get an order for security for costs against her husband?—Yes.

190. Then, supposing he does not provide them?—Then she has to decide whether she will go on without the security or wait for it.

191. (*Chairman.*) Or move to commit him?—Yes.

192. (*Mr. Rufus Isaacs.*) Then either she must move to commit him to prison for not finding the money——?—She could not do that unless she could show he was able to comply with the order.

193. She would have to establish by evidence that he had the money and would not provide it?—Yes

194. It is not very easy. If she did not do that she must either go on without having the security at all, or drop the suit, must she not?—That would be so.

195. That brings me to the point we wanted to know about. Are there no cases, then, of her going before the court and saying, "I have nothing of my "own; my husband has 2*l.* a week, but he is in default,

" and I have no means of making him pay the security " for costs, and I want to go on with my divorce "? Is there no means of the court saying to her she should be allowed to go on *in formâ pauperis*?—There have been one or two cases when the limit has been exceeded slightly and the judge has given special leave. There is no absolute limit fixed by rule: it is discretionary.

196. But you have never known a case when it has been done when the husband has been earning 2*l.*?—I should not like to say it has never been done.

197. That does not quite answer the question. Supposing it is 2*l.* 10*s.* I want to ascertain the fact?—I was putting 2*l.* as about the limit, and that may have been exceeded by a shilling or two.

198. Well, the amount is immaterial for my point. Supposing he is earning 3*l.* a week—what I want to know is this: an order is made against him; he is earning 3*l.* a week and the court makes an order against him to provide security for costs. How much would that be?—I cannot say. Very likely 20*l.*, or 25*l.*, or 30*l.* or thereabouts.

199. And he has to find security for the amount?—Yes.

200. Supposing he is earning wages at the rate of 3*l.* a week, and he does not find that security, and he has not the means to provide the security, it would be useless to move to commit him?—Yes.

201. Then, the only alternative would be for the woman to go on without the security?—Yes.

202. Taking her chances of what she might recover from the husband?—Yes.

203. If she has not the money herself she cannot do it. Do you know of any case in which the court has, under such circumstances, allowed her to go on suing *in formâ pauperis*?—No, I do not know of any.

204. Do you know of any applications?—I do not know of any applications.

205. It is quite unknown to the court?—I do not know of any.

206. That would be an instance in which a woman was not able to proceed with her suit because she has not the means, and she would have to drop the suit as Lord Derby suggested?—There have been applications where there has been a difficulty in complying with the order for security, and a small payment has been made to help her to go on.

207. (*Mr. Spender.*) It practically comes to this: if a woman is herself a pauper she can only succeed *in formâ pauperis* if she can get security for costs against the husband?—Or unless his means are so small that the joint means entitle her to get an order to sue as a pauper.

208. (*Chairman.*) Is it the fact that these applications for stay for the husband to secure costs to the wife are numerous?—Oh, very; in almost every case.

209. So that in the country, if a man sues and she defends, he would have to provide her costs too?—Yes.

210. And so, if she sued, he would have to find her costs?—Yes. According to a general rule, the wife's costs are taxed up to the case being set down for trial, and on that taxation the wife's agent asks for security for her costs of hearing. It is not always done, but that is the general rule.

211. Take a country case; the husband may possibly not only have to provide his own costs for proceeding, but his wife's costs for proceeding against him or defending herself?—Yes.

212. (*Sir Lewis Dibdin.*) Did you say that the conditions in which the person could sue *in formâ pauperis* were in the discretion of the judge?—Yes. The orders do not always go to the judge because they are dealt with in the registry up to a point.

213. Then I suppose a case such as Mr. Isaacs put to you might be dealt with, if the court chose, by the court itself under its discretion?—If a special application were made to the court I think there would be discretion to deal with it.

214. (*Lord Guthrie.*) Mr. Musgrave, in his proof, refers to cases where the pauper sues in person. Might he tell us, out of the 15 or 20, how many such cases there are, and whether they are men or women; and in that case, Mr. Musgrave, supposing the man sued in person, to what extent would the 10*l.* or 12*l.* which you have mentioned be reduced at all?—I think it would be exactly the same, because I am not allowing for any real solicitors' charges; the amount I allow for a sort of clerical work is for getting the affidavits drawn up by somebody.

(*Mr. Rufus Isaacs.*) Would Mr. Musgrave, for convenience, refer us to the statute conferring the jurisdiction on the court with reference to suing *in formâ pauperis*?

(*Chairman.*) I do not think there is any.

(*Mr. Rufus Isaacs.*) That is what occurs to me, because it is quite a different rule to what applies in the King's Bench or Chancery.

(*Chairman.*) I think it is 25*s.* a week in common law, but I am not sure.

(*Mr. Rufus Isaacs.*) But it is statutory there.

(*Sir Lewis Dibdin.*) It is 20*l.* now, and it used to be 5*l.* when I was a young man.

(*Mr Rufus Isaacs.*) It is not a question of weekly earnings, but that you are not worth 20*l.* or 25*l.*

(*Sir Lewis Dibdin.*) Yes.

(*Witness.*) That is so also as regards the divorce rules.

215. (*Chairman.*) The effect of the order *in formâ pauperis* is to free the litigant of court fees?—Yes.

216. And the necessity of paying counsel and solicitors if he can get on without them?—Yes.

217. (*Mr. Rufus Isaacs.*) Would counsel be appointed by the court under those circumstances?—They never are in divorce.

(*Sir Lewis Dibdin.*) But they are in the other branches of the High Court?

218. (*Chairman.*) I think they do it for nothing, or possibly get a trifle. Is not that so?—I should not like to say what they do.

(*Mr. Rufus Isaacs.*) In the other divisions the practice is to appoint a counsel.

(*Sir Lewis Dibdin.*) In the Chancery Division the practice is to appoint a solicitor and counsel, and they act for nothing, but I do not think that is done in the Divorce Court.

(*Chairman.*) There have been cases where I have made orders that the Official Solicitor should take it up and see it through. I have had cases of that sort.

(*Mr. Spender.*) Who conducts the case?

(*Chairman.*) In a pauper case?

(*Mr. Spender.*) Yes.

(*Chairman.*) The persons themselves. I have had a good number of them where the party goes into the box with a written statement of what he has to say; he swears it is true, and he proves his case much quicker as a rule than counsel!

(*Mr. Rufus Isaacs.*) That is because you allow him to do things you would not allow counsel to do!

(*Chairman.*) The judge has to do it for him; and he asks if he has anybody else to prove his facts, and that person is produced. But we will probably get from Mr. Musgrave something that will help us with regard to the total number of petitions filed in pauper cases.

The following have been forwarded by Mr. Musgrave as a supplement to his evidence:—

AUTHORITY FOR RULES AS TO SUING IN "FORMÂ PAUPERIS."

Rules 25 to 31, and 208 to 211, of the Divorce Rules, made in pursuance of 20 and 21 Vict. c. 85, sections 53 and 54, regulate the practice as to applications for leave to sue or defend as a pauper.

The 54th section has not been repealed, although the table of fees authorised under that section has been held to be abolished by the order as to Supreme Court Fees, 1884, made in pursuance of the Supreme Court of Judicature Act, 1875, section 10, and presumably future orders affecting divorce fees will be made under the powers given by the latter Act.

Under the existing rules as to pauper applications, an extension of the limits of earnings could be made simply by direction of the judge.

Number of Pauper Petitions filed.

	By Solicitor.	In Person.	Total.
1907 - - -	51	4	55
1908 - - -	45	8	53
1909 - - -	58	8	66

Pauper Expenses taxed.

1907.	£	s.	d.	
Anns *v.* Anns - -	20	11	8	Town.
Vagg *v.* Vagg and Gemry.	12	5	1	Town.
Thomas, E., *v.* Thomas, R. W.	12	7	5	Liverpool.
Williams *v.* Williams and Jones.	19	16	6	Salop.
1908.				
Treffrey, A. E., *v.* Treffrey, F. C.	10	11	9	Portsmouth.
Cox *v.* Cox and Toms -	17	1	0	Exeter.
Richards *v.* Richards and Mashes.	4	10	0	Town.*
Foinette *v.* Foinette and Mendoza.	37 (Not taxed.)	0	0	Town.
1909.				
Cunningham, M. A., *v.* Cunningham, J.	12	12	9	Town.
Lavender *v.* Lavender and Handley.	5	0	6	Town.*
Andrews, M., *v.* Andrew, A. J.	12	5	0	Town.
Williams *v.* Williams and Wheeler.	12	16	8	Falmouth.
Howarth *v.* Howarth -	5	0	10	Lincs.
Clarke, E., *v.* Clarke -	21	1	10	Isle of Wight.

* These are the only two cases in the three years of taxed expenses of paupers suing in person.

A. MUSGRAVE,
Registrar.

Sir JOHN MACDONELL, C.B., LL.D., called and examined.

219. (*Chairman.*) Sir John Macdonell, you are a Master of the Supreme Court?—I am.

220. Perhaps you will tell us some of your other qualifications?—It is difficult for me to say more than that I have for some years back edited, along with my other duties as master, the Judicial Statistics, which include figures as to divorce and cognate matters. I have also had, as a professor of Comparative Law, to look into the subject of the history of divorce, and at your suggestion I have prepared a short memorandum indicating briefly the salient points in the history of divorce.

221. Professor of what did you say?—Professor of Comparative Law of the University of London.

222. And you are a member of some of the international societies?—I am an associate of the Institute of International Law and member of the Institute of International Statistics.

223. Now you have been good enough to prepare first of all some notes on the legal history of divorce?—If your Lordship thinks I should take that first.

224. I think so, if you do not mind. It will be more convenient to take that first, because it begins at an earlier date than the other matters you have dealt with. I did think it would be possible to ask you to put in your notes, but I have studied them and find them so full of material, and so interesting—and possibly on some points they want a little explanation and amplification—that I think the best way would be for you just to read them and point out anything you have to add as you go along?—If your Lordship pleases. You will allow me, perhaps, in certain passages in this memorandum, which I have called "Some Notes on the Legal History of Divorce," to pass lightly over points of detail, and at certain passages perhaps slightly to amplify them.

225. Certainly?—I begin by saying, that in "communities in which only monogamy has been "recognised, there have been five—I ought perhaps "to say six—legal systems regulating divorce and "separation. (1) Systems under which divorce and "separation are left to the parties themselves without "intervention on the part of the State, marriage "being a contract, differing indeed from other con-"tracts in creating a status, but a contract all the "same, which may be rescinded by the acts of the "parties themselves. (2) Systems under which divorce "is left to the parties, but subject to certain conditions "imposed by the State. (3) Systems under which "divorce is permitted only in virtue of the decree of "a court. (4) Systems under which divorce, but not "permanent separation, is recognised. (5) Systems "under which permanent separation, but not divorce "is recognised." I ought to add a sixth. "Systems "under which both divorce and permanent separation "are recognised." I first deal with the Roman law, that is to say, as it existed towards the end of the Republic and during the Empire. Briefly epitomising what is to be found in the first page of the memorandum, it comes to this, that at that time divorce was practically a private matter, the parties being free to conclude a divorce without reference to any public authority. I mention some slight qualification according to which, at a certain time in the history of Roman law, a condition was annexed that the divorce should take place before a certain number of witnesses. Then passing to what I may call the second stage in the history of divorce to be found in early Christian times, I point out that, "relying mainly upon certain passages "in the New Testament, chiefly certain texts in "Matthew, Mark, Luke, and Corinthians, the Church "took a very different view of marriage from that of "Roman law. It did not regard marriage as a mere "contract; it viewed second marriages with disfavour"; it regarded marriage as a sacrament, and also it regarded marriage as indissoluble; but that position does not seem to have been taken up definitely and distinctly from the first. I need not trouble the Commission with the details as to the time in which an exact opinion was arrived at by the Church with regard to that. But, roughly speaking, from about the end of the fourth century to the middle of the fifth century, which is about St. Augustine's date, the doctrine seems to have been tolerably clearly defined, though I find he himself states at the close of one of his treatises or tracts on the subject that it is most obscure and highly involved, and he repeats that observation in other writings in which he refers to the matter.

226. Are you dealing with that footnote?—Yes, when he states he has discussed and dealt with the subject of marriage and re-marriage in his own way, and to the best of his ability, but that he must admit the question respecting marriage is most obscure and highly involved.

227. We shall have this memorandum of yours. I suppose we may treat this as part of your evidence?—Well, I am glad your Lordship puts that to me. If this is to be printed I should like to add many things, which are not mentioned here, to make the memorandum somewhat more complete.

228. Will you add those as you give your evidence now? We shall print this as part of your evidence as being given as well?—Would your Lordship like me to confine myself to the text of the memorandum?

229. No, as long as we have this as well it will be very convenient to have this printed separately, but as you are giving it we will have it in addition. It is so full of material that I do not want you to cut this short at all?—Then I pass to what I may call the third or fourth stage, which showed the conflict that went on between the Church doctrine and the secular law—and by secular law I mean chiefly the Roman law as to divorce. In the East, where a seat of empire was, there went on a struggle for a long time between the Church and the emperors with regard chiefly to the subject of divorce by mutual consent—whether that was to be law or not. Christian emperors did not at once abolish the Roman law; but in the first instance they imposed a sort of fine on delinquents—the wife forfeiting the whole or a part of her *dos*; and if the husband was the delinquent the wife received the *donatio propter nuptias*. Then came a period which extended, roughly, from the middle of the fifth century to the ninth or tenth century in which there was a constant fluctuation of legislation—one emperor sanctioning divorce by mutual consent and the next emperor rescinding it; nay, the same emperor in the course of his reign varying legislation with regard to this point. But somewhere about the middle of the fifth century, I think it was, there was an important Act to which I have referred here—I think on page 4—in which it was stated that, though marriage might be entered into by mere consent, the dissolution of marriage ought to be made somewhat more difficult than the formation of it, in view of the consideration with regard to children. The same law goes on to state, I think for the first time in full detail, what are to be the just causes of divorce, and they are enumerated on page 5. I think one may say that the grounds set forth there have substantially remained the law of the Greek Church—"divorce for the above reasons or similar, "recognised; divorce by mutual consent, not."

230. I think it would be convenient to have those causes on the note?—"Grounds of divorce (for wife "against husband): adultery, homicide, poisoning, "conspiracy against the emperor, condemnation for "forgery, rifling of tombs, stealing from sacred "buildings, suborning thieves, kidnapping, consorting "with lewd women before her eyes, plotting against "her life or beating her," and a somewhat similar list with regard to divorce at the instance of a husband.

231. (*Judge Tindal Atkinson.*) You have not given the instances of the husband's divorce?—They are in my notes; some of them are very peculiar.

232. (*Chairman.*) You say that remained substantially the law of the Greek Church?—Yes.

233. (*Lord Guthrie.*) No branch of the Christian Church has ever recognised divorce at the instance of one party without consent of the other, without a reason assigned?—That is a difficult question to answer. Before answering it one would like to know what time you are speaking of.

234. I mean at any time?—If you are speaking of very early times, say, in the first three or four centuries, you are putting a question as to which I think I am right in saying there is the very greatest diversity of opinion.

235. (*Sir Lewis Dibdin.*) Is there?—Many scholars, as far as I can find—and my own observation leads me to the same opinion—think that for some considerable time there was no clear settled practice.

235*a*. (*Chairman.*) If you will kindly turn to the short abstract for causes of divorce in Greece as we have them in this memorandum. They are somewhat similar to what you express. You have prepared, yourself, a synopsis of the laws and seen this abstract since?—I have seen that abstract, and as far as I have seen it, it is very accurately and admirably done.

236. We need not read them through, but if the Commissioners will kindly look under the heading of Greece they will see what we are now on?—I have looked at that, but I think there is some variation.

237. That is taken from the Blue Book?—Yes, that is as I understand it. The list you now refer me to is the list of the causes for divorce in Austria.

238. No, Greece?—It is similar. A conspiracy against the sovereign figures in both. Then in the West there seems to have gone on a somewhat similar struggle. In the East it had been a struggle between Roman law and the views of the Church. In the West there was a similar struggle, the Church coming into "collision with the systems which viewed marriage "much in the light of a purchase; systems which "allowed the husband a right of divorce, or recog-"nised divorce, by mutual consent without any "formality or the intervention of any court." In illustration I refer to some of the so-called Barbarian codes that came into existence in the fourth, fifth and sixth centuries. Some of these codes give very large powers, especially to the husband, in the way of divorce, and treat wives in a very summary way. "In "Celtic communities the Church met with much the "same antagonism," and I find in Mr. O'Curry's book, epitomising his researches in ancient Irish law, "There "were seven cases in which the wife could legally "separate from her husband and retain the whole or "part of her *coibche* and obtain special damages for "injury;" and in Wales, too, one sees that the Church doctrines as to marriage came into conflict with native laws which recognised facilities for divorce. "Even "while adhering to the doctrine of indissolubility, the "Church did not always take severe measures against "offenders." Löning, in his book on Church history, says, at the end of the fourth century it was a prevalent practice for man and wife when the first marriage had been dissolved on account of adultery or on account of some other severer or grave offence, to enter into a second marriage without experiencing ecclesiastical discipline on that account. Then, "upon the intro-"duction into England of Christianity, there was a "similar conflict between the doctrine of the Church "and the law of the Anglo-Saxons. According to "the latter, divorce seems to have been recognised; "apparently it might take place either by mutual "consent or on account of the wife's desertion or "infidelity," and, "various councils, for example the "Council of Hertford in 673 proclaimed the indis-"solubility of marriage. But there is evidence that "this theory was not strictly adhered to," and I refer to a book known as the Penitential of Archbishop Theodore, dating somewhere in the seventh century, which states it is not permissible to dissolve a lawful marriage without the consent of both. Coming to a much later period, a period somewhere about the thirteenth or fourteenth century, after there appeared what are known in ecclesiastical law as the Decretum of Gratiam, and the Decretals of Pope Gregory IX., there had grown up in the Canon Law an elaborate theory with far-reaching consequences as to the grounds of annulment of marriage—not for divorce, but grounds for declaring that marriage was void. Thus there grew up a distinction referred to in these notes between impediments which were merely hindrances and impediments which actually severed the marriage connection. I have given here a list of some of those causes which went to the root of the marriage tie, and which, if they existed, avoided that tie. I have taken it from a French writer on Canon Law, but as far as I know there is no complete accord with regard to these particular grounds.

239. Are you quoting from Esmein?—I am giving a list on page 8, and the list is taken from Esmein. I ought to be careful to say I have read enough to satisfy myself that the list varied from time to time. So that the theory of indissolubility of marriage, which by this time had been proclaimed by the Church, was accompanied or qualified by an extensive development of the grounds upon which annulment of marriage was permitted. "This variety of grounds "of annulment, especially those based on spiritual "affinity, was one of the chief complaints of the "Reformers," and Luther is eloquently scornful of the fine-spun distinction drawn by the Church with regard to the impediments that void marriage.

240. Does your reading enable you to say what was the object of developing these distinctions?—One may surmise the reasons were mainly these: First, that human nature being what it is, the theory of indissolubility if carried out in practice would have become intolerable; and, secondly, one may also surmise that people who

were powerful, people who were rich, and potent interests demanded certain unions to be voided, and that politics played their part. The history of Margaret Tudor, for example, and her varied matrimonial experiences are in point. I forget how many husbands she had, I think they followed each other, but I am not quite sure even of that. Highly secular reasons, if I mistake not, had their effect.

241. You mean to say they were developed in order to get rid of too tight a tie which, if recognised as indissoluble —— ?—If one may draw an illustration from the history of English law, there was a sort of equity introduced to temper the severity of the common law.

242. I notice in reading the debates in the House of Lords with regard to the 1857 Act, one refers to affinity or consanguinity resulting in the godfather being the husband of the other party?—Coke mentions that case. I remember Mr. Maitland in his book on the history of English law states that, whenever two parties wished a dissolution of the marriage on the ground that the marriage was void, it would be very strange if they could not, by searching their genealogical tree, find some ground of affinity or other matter which would help them out.

243. Have you examined the laws of those countries which at present do not recognise divorce to see to what extent they maintain divorce by grounds of annulment?—Only imperfectly. One is struck with the fact in looking at the laws of such countries as Austria, where for a certain part of the population divorce is not recognised, that there seems to be a very large number of grounds of annulment.

244. Is that amongst the Catholics?—That is among the Catholic population of Austria.

245. Are those grounds anywhere given that we can refer to them? I have not studied this, but do you know if they are given in the United States book?—Some are given there. The United States book, as your Lordship refers to that, I may explain, derives its information, as far as the laws are concerned, chiefly from a work in four volumes, published in Germany. One of these volumes had as contributors lawyers of almost all countries in Europe. Speaking from intimate experience, no doubt, they stated what the laws were in their own particular countries. In these four volumes is found most of the information contained in the United States volume.

246. What work is that?—It is compiled by two authors, Leske and Loewenfeld.*

247. (*Lord Guthrie.*) Is not Ireland more restricted than any country in the world in so far as their civil law permits no relaxation, and their law does not recognise the relaxation of the ecclesiastical law. Austria recognises the relaxation of the ecclesiastical law?—Yes.

248. And Ireland does not, and there is no relaxation of its own?—Yes, that is so.

249. (*Sir Lewis Dibdin.*) I think Sir John will agree that most of these severe cases he mentions were abolished at the Council of Trent?—No doubt a change took place.

250. A great change?—For the moment I am dealing with the subject historically.

251. (*Chairman.*) I thought you said that in Austria at present—— ?—Yes, I am trying to keep to a historical narrative. So far as Austria is concerned at the present time, I think that the grounds of annulment—I speak with diffidence with regard to it—are numerous.

252. (*Sir Lewis Dibdin.*) Were not the decrees of Trent promulgated in Austria?—Yes, I think that is one of the countries where that was so.

253. (*Chairman.*) We can look at that Austrian question ourselves?—Then returning to the point in the narrative at which I stopped, I may call attention to the fact that the well-known statute of Henry VIII. draws attention to the fact that "Marriages have been "brought into such uncertainty thereby that no "marriage could be so surely knit or bounden but it "should lie in either of the parties' power to prove a "pre-contract, a kindred and alliance, or a carnal "knowledge to defeat the same."

254. That is 32 Henry VIII., chapter 38?—Yes; then after the Reformation no doubt the subject takes a new aspect, and my notes refer only to a few of the many changes which took place. I note "in the first place "that many of the Reformers were of opinion that "marriage was a matter to be regulated by the State." Luther, in a passage I find quoted by a certain writer on the subject, points that out, "In the second place "all, or almost all, the Reformers rejected the doctrine "that marriage was a sacrament. In the third place, "the view of the majority of the Reformers was that "marriage was dissoluble, though there was great "uncertainty as to the causes for which it might be "lawfully dissolved," and then I mention some of the views of leading Reformers with regard to this point. I give a quotation here from Zwingli, who puts the question, "What if a more serious ground than "adultery exists?" and the answer is, "The laws on the "subject ought to be interpreted fully and freely. The "allowance of divorce for adultery does not exclude it "for graver reasons." Then I refer to a book which, as far as I can make out, had great influence, partly from its having been often printed, not merely in the country where it was written, but also in other countries—a book by the Reformer Beza upon marriage and divorce. He justifies divorce in the case of adultery and desertion, but he very strenuously argues against those—and there were many at that time—who alleged that there were other legitimate causes than adultery and desertion. "To those who relied upon the laws "of the Emperors," to which I previously referred—"acquiesced in by bishops, as showing the existence of "other grounds," his answer was a reference to canons at variance with those laws. Besides, as Beza points out, many of the grounds of divorce mentioned in the Imperial Constitution were capital offences; "and why "did not the Emperors," he asks, "do their duty and "terminate the marriages by the execution of the "offenders?" It is a point not unworthy of attention that the penal law was so drastic and so cruel at this time that there were many instances in which a marriage in the event of there being grave conjugal offences and violence committed, was terminated by other means than the divorce court, namely, the death or the execution of the offender. As far as I know, Knox—but I cannot speak with great confidence on the matter—seems to admit only one cause of divorce, and I give a quotation from the Book of Discipline.

255. (*Lord Guthrie.*) I think Knox had been for five years in daily contact with Beza?—Yes, and with Calvin, too, who held somewhat similar views. If I were writing a history of this I should try to emphasise the point which your Lordship refers to. There was no doubt that there was a close connection between Geneva and Zurich, and England and France. The root and source from which a large portion of the enormous literature with regard to divorce at this time came were Geneva and Zurich. We find in England, about this time, Martin Bucer and Peter Martyr, and these and other foreigners no doubt exercised great influence.

256. (*Chairman.*) Then you have a note there "Malicious desertion for four years was made a ground "of divorce in Scotland by Statute." Is that in Scotland?—Yes.

257. (*Lord Guthrie.*) That has a preamble that it has been the law ever since the Reformation, though it is declared now as in 1573?—Yes. Then in England there seems to have been much difference of opinion with regard to the ecclesiastical laws in force, and particularly those relating to marriage and divorce, for some time after Henry VIII. had broken away from Rome. Next, I call attention to a statute passed in 1553 or 1554, nominating a Commission consisting of 32 persons to examine the ecclesiastical law, and retain what portions of it ——

258. (*Chairman.*) Have you the names of the members of the Commission?—I have not them before me, but I know where they can be found.

259. I looked for them in the book in which the translation is, but I could not see them?—Yes, I am able to lay my hands on the names of the Commissioners.

260. I notice, for instance, in the debates in the House of Lords in 1857 that Cranmer was one, and the bishops of London, Winchester, and Ely, and Latimer and Parker were others?—I think the names are given

* Die Rechtverfolgung im Internationalen Verkehr.

in either Strype's account of the Commission, or in Collier's or Fuller's account; I am not sure which.*

261. (*Sir Lewis Dibdin.*) Which Commission do you mean?—The question put by his Lordship ——.

262. I think we are treating you a little unfairly. If you would read it, and make your statement, and leave us to question you afterwards, it would be better? —Just as you please, but I am glad to clear up points as I go on.

(*Chairman.*) I simply asked him if he had the names of the Commissioners who gave the report of which we have a copy put in.

(*Sir Lewis Dibdin.*) But they all gave a report, and they all gave probably the same report, and there are three Commissions.

(*Chairman.*) I only wanted that of which we have a translation.

(*Sir Lewis Dibdin.*) I think Sir John meant it was practically the same code inquired into and reported upon by three Commissions over a period of something like seventy years.

(*Chairman.*) Yes, and I want the names.

(*Sir Lewis Dibdin.*) Of which Commission?

(*Chairman.*) All of them.

(*The Witness.*) In point of fact nothing came of Henry VIII.'s Act in Henry VIII.'s reign.

(*Sir Lewis Dibdin.*) Pardon me, a code was prepared.

(*The Earl of Derby.*) Cannot we have the questions after?

(*Chairman.*) I am afraid it is my fault. I only wanted the names of those who were parties to the report we have got.

(*The Witness.*) In Edward the VI.'s reign another statute substantially the same as that of Henry VIII. was passed, and then a Commission was formed. I cannot at the present moment give the names; I think I shall be able to give them—and the result was the preparation of a code prepared, it is stated by some of the historians, actually in Cranmer's own handwriting. That statement, known as the Reformatio Legum Ecclesiasticarum, never became law; but it is a statement of what was conceived by eminent lawyers or ecclesiastics to be, or what ought to be, law, and then I proceed to quote a few passages from that.

263. We have a copy of that?—Yes, I see some of the words have dropped out of the copy of my notes, but one of the most important proposals was that when a husband or wife had been found guilty of adultery, then the innocent party might enter into a new marriage. It was also stated that no divorce was to be declared until an ecclesiastic court had determined the matter; and then it makes some provisions which I need not mention in detail. One important resolution was a resolution that judicial separation should be entirely abolished. Here arises a question which is discussed at considerable length in the Report of the Divorce Commission on which the Matrimonial Act of 1857 was founded. In the view of the Commissioners "There " seems some evidence that for more than half a century, " from the year 1550 until the year 1602, marriage was " not held by the Church, and was not, therefore, held " by the law, to be indissoluble." "The Divorce Com- " mission, in naming 1550, had in view the Marquis of " Northampton's case, but as that case was decided in " 1548, an earlier date than 1550 may probably be fixed " upon." Then I refer briefly to what was described at great length in the Report of the Divorce Commission. " A Commission comprising the Archbishop of Canter- " bury declared that the Marquis of Northampton's first " marriage with Anne Bourchier was dissolved by her " adultery. This decision was confirmed in 1552 by" a certain statute; I think that statute was subsequently repealed. The Divorce Commission to which I have referred drew attention to certain other facts and circumstances which seemed to them to support the conclusion that, at the time to which they referred, namely, from 1850 to 1602, marriage was not held by the Church, and was not held by the law, to be indissoluble. In support of that they referred to the 105th canon (1597), which seemed "to distinguish between " dissolving and annulling marriage." They also referred to the terms of the 109th canon, "which require " in all sentences of divorce and separation a mensa et " toro to give a bond that the parties will not, during " each other's life, contract matrimony with another " person"; and the Commissioners draw this conclusion: " The very fact of enjoining and prohibiting the bond " implies that the marriage which the bond was intended " to prevent would have been valid." I hope I am not going into detail too much here.

264. Is not most of this in the Report of the Commissioners?—I think the greater part is in the Report of the Commissioners; but there are one or two cases (if the Commission think fit to print my memorandum I should refer to them) in the common law courts that show that even in the middle of the seventeenth century there was in the minds of some of the judges uncertainty with regard to this point. One is a case in Crokes (Elizabeth) Report, in 1602, and another as late as 1641—a case to be found in the small volume known as March's Reports—which seems to show that as late as that time some of the English judges were uncertain as to the point.

265. (*Mr. Rufus Isaacs.*) Can you give us the name of the case, and the page of the report?—The case of Williams, reported on page 10. I only refer incidentally to the statute passed in the 1 James, chapter 11, known as the Bigamy Statute.

(*Sir Lewis Dibdin.*) That paragraph that you have omitted—had not it better be read—Foljambe's case?

266. (*Chairman.*) I think you had better read it if anybody wants it?—If your Lordship pleases. "It is " usually assumed that the law was authoritatively " stated in Foljambe's case, and the note of the case in " Salkeld reports"—Salkeld wrote a century later—is "a divorce for adultery was anciently a vinculo " matrimonii; and therefore in the beginning of the " reign of Queen Elizabeth the opinion of the Church " of England was that after a divorce for adultery the " parties might marry again; but in Foljambe's case, " anno 44 Elizabeth, in the Star Chamber, that opinion " was changed; and Archbishop Bancroft, upon the " advice of the divines held that adultery was only " a cause of divorce a mensa et toro. Noy's report " of the same case (Noy's Reports, page 100) is 'F. " ' being divorced for incontinence of the wife, he " ' afterwards marries P., the daughter of Rye, living " ' the first wife. By the whole Court that is a void " ' marriage. For the divorce is not, but a mensa et toro, " ' and does not dissolve vinculum matrimonii. And " ' by Whitgift, Archbishop of Canterbury, so is the " ' opinions of divines and civilians.' Then there is " another report in Moore, which is substantially the " same as Noy's, but it ends, 'And John Whitgift, " ' then Archbishop of Canterbury, said that he had " ' called to himself at Lambeth the most sage " ' divines and civilians, and that they had all " ' agreed thereon.' Then I refer to the Statute of Bigamy. On that statute the Commissioners base a certain argument. They argue that "from one of the " sections it is clear that even at the date of the statute " there was a recognition of divorce as distinct from " annulment. 'It is certain that even at a later date " ' divines, members of the Church of England, were " ' not agreed as to the subject. I need only refer to " ' the argument of Bishop Cosin in the Duke of " ' Norfolk's case'—which is reported in anno domini " 1700, 13 State trials, 1332—'in favour of divorce " ' a vinculo.' Not so well known as Bishop Cosin's " opinion are the following words of Dr. Hall, Bishop " of Norwich, 'I should therefore earnestly advise and " ' exhort those whom it may concern carefully and " ' effectually to apply themselves to the forementioned " ' remedies; reconciliation, if it be possible to prevent " ' a divorce; holy endeavours of a continued con- " ' tinence if it may be obtained, to prevent a second " ' marriage after divorce. But, if those prevail not, " ' I dare not lay a load upon any man's conscience " ' which God hath not burthened; I dare not ensnare " ' those whom God will have free.' "

267. What is that quoted from?—That is a quotation to be found in one of his works.

* As to names of members of Edward the Sixth's Commission, Fuller's Church History, I., 107. As to the composition of the Commissions generally, Dixon's History of the Church of England, III., 351.

268. Of what date?—Bishop Hall died in 1656. In other Protestant countries about this time divorce was admitted, but there was no generally accepted opinion as to the grounds. In the seventeenth century some writers, relying chiefly on the wording of certain texts of Scripture, maintained that adultery was the only ground for divorce. That view I find stated by Grotius, though he vacillated on the subject, and the courts in his own country took a wider view, and Van Linden and other Dutch lawyers decided that, in 1650, if one spouse entirely deserted the other, there might be a divorce. Now, "From the middle of "the seventeenth century there came a change," and I am speaking specially of England. "Dissolution of "marriage under the form of annulment had become "much more difficult and rare. The number of grounds "of nullity were fewer. Papal dispensations had no "longer effect. The common law courts had not "worked out independently a distinct theory as to the "dissolubility of marriage. They had, indeed, been "required to consider the matter with reference to "dower, which depended upon the existence of a valid "marriage. But the early authorities did not always "discriminate clearly between divorce and judicial "separation. In these circumstances the secular courts "took their opinions as to divorce from the ecclesiastical "courts. The wealthy and powerful who had before "the Reformation obtained release through decrees of "annulment sought it at the hands of Parliament; "and for some two centuries and a half they got "redress by means of special Acts." Passing to the eighteenth century I think one may say there comes, specially in Germany, a great change. "Before that "time the discussion had revolved round two or three "texts; divines, scholars, and lawyers might read them "differently; it was tacitly accepted that their true "meaning, could it be found, was decisive and final. "The eighteenth century was the age of the writers on "the natural law; and in the view of some of them natural "law was to be separated from theology. There "became evident a disposition to deal freely with the "subject from the point of view of the interests of the "community and general utility, and to suggest other "grounds than adultery and desertion." If I were allowed to expand this I would refer to a considerable number—at all events certain writers who clearly are going upon an entirely different line of argument from the previous writers who were guided by three or four texts.

269. Can you give us the reference?—To one I may refer—Christian Thomasius—a well-known writer on international law.

270. Have you got a reference to his work?—No, I have not here the exact titles of his works, but I will give them.* Then I call attention to the project or draft of the code of Frederick the Great, which was prepared, at his instance, by his minister and legal adviser, and somewhere about 1749, I think, the draft was published, and I give a quotation, somewhat too long I fear, which indicates——

271. Are the next two pages all quotation?—Yes.

272. Well, you need not read those. What is the general effect?—The general effect of them is to greatly widen the grounds of divorce. The author of the project or draft has evidently no longer in his mind the question of whether or not these grounds fall within the four texts of Scriptures, which hitherto have dominated. The test for him is whether, having regard to what is reasonable with regard to the marriage tie, it should continue to subsist.

273. Might I ask if that was promulgated and became law?—Some of these sections—the sections in which these are to be found were, as I understand, promulgated, and became law in certain parts of Prussia. They never became law throughout Prussia. Subsequently in Prussia the Landrecht was published, and it became law throughout the whole of Prussia for a certain period, and that code contained very extensive grounds for divorce. Some of them I mention.

274. That code of Frederick the Great, I see, includes both malicious desertion and insanity?—Yes.

275. Have you given us what the Landrecht does?—No, I have not given that in full, but if it was thought desirable I could expand. I have in my notes elsewhere the leading provisions of it, but I did not put them in here.

276. Perhaps you will send that?—Yes. Then I think the next in order of date and importance was the law passed in France, in 1792, and which did away with judicial separation and greatly extended the ground of divorce—mutual consent, incompatibility of temper——

277. That was rather a disturbed time?—No doubt it was. It was not a period at which calm consideration of social questions was possible. Divorce was so increased by this law that I believe at one time the divorces were almost as numerous as marriages.

278. Then we come to the nineteenth century?—Then that law was greatly altered by the Code Civil, which greatly reduced the number.

279. That is Napoleon's code?—Yes. The law as to divorce was repealed at the Restoration in France; and from 1816 I think I may pass in my survey of legislation to the English Act of 1857—the Matrimonial Causes Act for England and Wales.

280. We have the French law as it now stands?—The present French law of 1884?

281. Yes. Then the next paragraph deals with our English Act?—Yes. In point of fact, at that page there ought to be a reference to the Swiss law of 1874—an important Federal Act which made uniform the divorce law for the whole of Switzerland.

282. Is not that the same as we have? We have an abstract of it?—You have an abstract of it.

283. What is the reference to it?—It was passed in 1874. Continuing the narrative in order of time, next comes the French Act of 1884, the terms of which are no doubt known to the Commission. Then coming in order of date and importance come the provisions of the German Civil Code, which came into operation in 1900.

284. I should like to have on the note what you say those are?—Articles 1555 to 1569 state the grounds of divorce—"they are adultery (article 1565), attempts on "the life (1566), malicious desertion"——

285. "For at least one year?"—Yes.

286. What does "faculative grounds" mean?—Discretionary or relative. "If the Respondent has, by "means of a serious breach of his or her marital duties, "or by dishonourable or immoral conduct, caused the "relations between to be so injuriously affected that "the Respondent could not be reasonably expected to "continue the marriage (1569); Insanity of at least "three years duration after the marriage, and so serious "as to destroy community of intellectual interests, and "there is no prospect of recovery (1569); Separation. "Same grounds as divorce. The separation may at "any time be changed on petition of either party into "an absolute divorce provided marital life has not been "renewed. In the first draft of the Civil Code it was "proposed to give no right to an immediate divorce, "but only a right to a temporary separation, which "might be converted into a decree of divorce. The "Second Commission to which the Bill was referred "was opposed to ordering temporary separation. "Ultimately it was enacted that a petitioner might "obtain a decree of a temporary separation or divorce "as he or she might think fit."

287. Apparently the other party to a separation could turn it into a divorce by applying to do so?—Yes.

288. That finishes the divorce?—Yes.

289. Now you have a few observations on judicial separation?—Yes, very few. "While refusing to "recognise divorce proper the Church permitted judicial "separation by the decree of an ecclesiastical court. "The causes for which English ecclesiastical courts "admitted judicial separation were, Adultery; cruelty; "unnatural offences. Desertion was not, according to "canon law, regarded as a ground for separation. "Most of the Reformers were strongly opposed to "judicial separation, as unscriptural and inconsistent "with the marriage tie." The arguments are put by Erasmus in his commentaries on the Corinthians at some length, and he argues strongly against the injustice of it. He says it is too bad to add affliction to the very person who ought to be helped, and Luther

* Among them is *Fundamenta Juris Naturæ et Gentium ex Sensu communi deducta.*

used some strong terms about it. "A brief reference " to the law in regard to agreements of separation " between husband and wife and to some recent enact- " ments may be made here. That the parties had by " deed or otherwise agreed to a separation was, in the " view of the ecclesiastial courts, no answer to a suit " for restitution of conjugal rights, even if the deed " contained a covenant not to sue. If the husband " returned to cohabitation there was an end of the " deeds and the covenants therein." I point out that for a long time there was a strong antipathy on the part of the judges, notably on the part of Lord Eldon, to recognise such an agreement; but after the decision of Wilson *v.* Wilson, in the House of Lords, it was no longer so. Then I give a brief account of the various Acts under which orders are made having to all intents and purposes the effect of decrees of judicial separation, chiefly orders made by magistrates.

(*Chairman.*) That is the Act of 1895?

290. (*Mr. Rufus Isaacs.*) There is an earlier one?—I first mention the 1878 Act.

291. (*Chairman.*) But that was amalgamated in the 1895 Act?—Yes, then I pass to the 1895 one, and then I refer to the provisions to be found in the Licensing Act of 1902. My last observation is that none of these notes touch what to my mind is a matter of great importance, the international aspects of divorce; the recognition of decrees of foreign courts by our courts, and of our decrees by foreign courts. If the Commission were desirous of obtaining any further information with regard to the subject it will be a pleasure to give it.

292. It might be material if you had any observation or notes you would like to supply on these two points. The jurisdiction, for instance, founded on nationality, and what is the effect of this convention of the European nations?—Yes, there have been sittings at short intervals of the Hague Conference, attended by almost all the leading nations of the continent of Europe, with regard to private international law, and they have come to agreements on certain subjects, *e.g.*, with regard to succession, to marriage, and to divorce.

293. Are those put in the form of a convention?—They are put in the form of a convention.

294. They are not authorised resolutions, except so far as you have representatives of the different countries individually?—I think with regard to certain countries matters have gone beyond that, and that some countries have actually legalised them.

295. Could you supplement this memorandum by sending a memorandum stating what has been done with regard to that?—If the Commissioners desire it.

296. And I understand also you have something to say about domicile as a foundation for a petition?—That, if I might suggest, had better be dealt with in such a memorandum.

297. (*Mr. Rufus Isaacs.*) As I understand, this country has not taken part in that Convention?—No.

298. (*Chairman.*) No private representative was there?—No one attended any of these conferences on behalf of our country.

299. But I think it would be useful to have any international resolution on the subject, if you can furnish us with it?—Certainly, I might say this; if this memorandum were printed, I should like to be allowed to supplement it largely. The imperfections of it nobody feels more than I do.

300. Do you mean you would like to take a copy and add to it?—I should like to add to it before it is printed.

301. You can do that. I propose to have the shorthand note to see what you have said, and at the end of that note of your evidence we can have your printed memorandum corrected, but I hope we shall get it very soon?—I will do my best.

(*Sir Lewis Dibdin.*) Will questions be asked of Sir John on this memorandum before we come to the tables?

(*Chairman.*) No, I think we had better deal with the statistics first.

Adjourned for a short time.

302. (*Chairman.*) Your next notes relate to jurisdiction as to divorce?—If your Lordship would not mind taking the figures I should be glad; just as you like.

303. Do you mind taking them in the order I have them?—No, just as you like.

304. "Jurisdiction as to divorce." I understand from your note, "Jurisdiction as to marriage and " divorce or separation is exercised, with rare " exceptions, by courts, not by the legislatures"?—That is as far as my observation and examination go.

305. "Among the exceptions as to divorce are " Ireland, Ontario, Quebec, Manitoba, and North-West " Territories of Canada." Then "In Denmark, Norway " and Sweden, the King has power to grant divorce. " In Bulgaria, Croatia, Slavonia and Servia, matrimonial " causes are dealt with by ecclesiastical courts. In " Finland divorce obtained from the Senate. In most " countries the ordinary tribunals have jurisdiction " to divorce. In Belgium, the district courts; in " Germany, the Landgericht. In three countries— " England, Ireland, and Scotland—jurisdiction in " matrimonial matters is exercised solely by a court " sitting in the capital"?—I ought to qualify that, " In three countries—England, Ireland, and Scotland— " jurisdiction in divorce matters"; because, as I understand with regard to certain matrimonial matters, the sheriff's court has jurisdiction.

306. In Scotland?—Yes, that should read, "divorce matters."

307. But Ireland does not exercise jurisdiction in divorce matters. The only divorce they get would be by the old form of a Bill?—Yes.

308. "No similar concentration of jurisdiction " appears to exist elsewhere"?—Might I say that in Germany I understand jurisdiction is exercised by the Landgericht, and that there are something like 170 such courts scattered all over Germany.

309. Which exercise jurisdiction?—Which exercise jurisdiction with regard to divorce.

310. That is local courts?—Local courts.

311. Perhaps you can tell us about France?—I believe in France the ordinary courts exercise jurisdiction there.

312. Scattered over the country?—Yes.

313. Then, "The test in some countries, *e.g.*, England " is, as a rule, domicile; in some American States, " residence for periods more or less long." I may say we are going to have the evidence of an American lawyer, who will not only give us the law in the different States, but also the proposals to be put forward by the Divorce Law Reform Association. Then as to conciliation; you have dealt with that. "According to " the laws of certain countries attempts at conciliation " must be made before a decree of divorce or separa- " tion, *e.g.*, Austria, Holland, Belgium, Italy." The judge sees the parties?—Yes, in Germany, too.

314. Do you think that would be a good thing in this country?—I think that would be a most important piece of machinery to add to the courts here. It is perfectly true from the figures that the results in some countries at attempts at conciliation are not very large, but in some other countries—in Germany, for example—a quarter, or at all events a fifth to a sixth of the cases terminated in the initial stage; and it seems to me in a matter of this kind, even if in the great majority of cases attempts at conciliation failed, success in a comparatively small majority would justify the introduction of some such feature into the machinery of the courts relative to divorce.

315. In our country people are at arm's length from the beginning. Would your suggestion be that immediately after proceedings are begun the judge should have power to summon the parties and see them with a view to reconciliation?—It strikes me that would be fruitful and good. This kind of litigation in not like ordinary litigation before an ordinary court dealing with questions of property. The disputes turn largely upon passing moods and states of feeling, and the introduction of some entirely disinterested party, free to speak to the parties as a friend more than as a judge, would in some considerable number of cases be likely, I think, to lead to a settlement.

316. That would hardly be capable of application in all those cases where the parties sued had deserted?—No, I am not contemplating that.

317. Where it is likely to be able to be done you mean?—Yes; a Bill dealing with this would require careful drafting. In cases of desertion, and probably cases of gross cruelty, it would be out of the question; but there would be a certain number of cases in which it would, I think, be fruitful.

318. Then with regard to publicity. "In Germany "the public may be excluded from court at the instance "of one of the parties." Then, "in Hungary hearings "are usually private. Representation by counsel is "compulsory." France we already have?—I may say that quite lately, in fact at the beginning of this year, there has come into force a new law in Norway in which I understand from the author of the Bill which has passed the Storthing, that one of the features is that the proceedings are to be in private.

319. Then, "Intervention on public behalf. A "defender of the marriage is appointed in Austria and "Hungary. In Germany a State official has the right "to intervene." Then, "Grounds of divorce. In recent "legislation, especially in the United States, there is a "tendency to recognise grounds of divorce implying "permanent unfitness for married life, such as habitual "drunkenness. There is also a tendency to admit as "grounds of divorce causes as to which the court must "have large discretion; such grounds as sévices, "excès, injures graves; elastic terms to be found in "some modern laws (*e.g.*, France and Italy). Some "States in America (*e.g.*, Washington and Rhode "Island) admit as grounds of divorce, any other "cause as the court in its discretion may deem "sufficient, so as to separation in Kentucky." Then, "Annulment. The grounds of annulment or nullity "differ much in different countries; *e.g.*, difference as "to degrees of consanguinity and affinity within which "marriage is forbidden; difference as to marriageable "ages; pregnancy before marriage (Austria)." "Marriage of the guilty parties"?—I should like to make a qualification here. I should not say in several European countries, but in one or two, for example, in Roumania, it is not sanctioned.

320. That is the next one?—Yes.

321. "In some European countries marriage between "the guilty party and the co-respondent are not "sanctioned," and you specify Roumania?—Yes, Roumania is one case.

322. "England, Scotland, and France are exceptions?"—I should say the rule is different in England, Scotland, and France.

323. "In Hungary the decree of divorce for adultery "forbids marriage with the person with whom the "adultery was committed. In some countries the "right of guilty party to re-marry is prohibited for a "certain period." "Difference in rights of husband "and wife. In several countries no distinction is made "between husband and wife as to the grounds for "divorce, *e.g.*, in Scotland and France, Hungary, "Germany. In England there is a difference. In Italy "there is a difference as to grounds of separation." Then as to separation you say, "Certain countries "recognise judicial separation only: Italy, Austria (as "to Catholics), Spain, Portugal, Argentine, Brazil, "Chili, and Mexico. Certain countries do not recognise "judicial separation; *e.g.*, Bulgaria and Roumania. In "certain countries judicial separation is recognised. "But it may be converted into a divorce on certain "conditions. In France a decree of separation may "after three years be converted into a decree of divorce "at the instance of either party. In Germany a "defendant has a right, if he or she demands it, to a "decree of divorce; and, if a decree of separation has "been made, it may at any time, at the instance of "either party, be converted into a decree of divorce. "In Switzerland a decree of judicial separation can "only be for two years and cannot be renewed." I think that exhausts your comments on jurisdiction?—These are the most important points.

324. Now with regard to the tables. I think you have put in a number of tables which have already been supplied to the Commissioners—Tables 1 to 24*?—I think that is the number.

325. Have you taken those with regard to England and Wales from the Civil Judicial Statistics?—I have taken them as to England and Wales from the Civil Judicial Statistics.

326. And those relating to foreign countries from the American reports?—Subject to this, that I have in several cases consulted other sources. There was a report produced a few years ago by an Italian statistician, and I have made some use of that. I have also made use of certain reports supplied by foreign Governments, but I may add, that since the table relative to foreign figures has been supplied, I have been able to get certain figures which will enable me to correct, in certain respects, Table 16.

327. Those for Italy are from Bosco's report in "Annali di Statistica"?—Yes.

328. Now you draw certain conclusions from your figures. I think the first is that in England and Wales divorces are increasing. According to what I have followed that is in Tables 1, 2, and 3?—And also, to a certain extent, Tables 4 and 5.

329. Further, that in England and Wales this increase is at a greater rate than the population is increased?—That I think is apparent from Tables 4 and 5 especially.

330. Is that increase large?—Well, taking Table 4 the decrees per 100,000 of estimated population in 1858 was ·92; in 1908 they were 1·90. Taking another criterion the decrees per 10,000 of the married population in 1861 were about half what they were in 1901.

331. That is Table 5?—That is Table 5.

332. Decrees on 10,000 of married population in 1861 were 2·02, and in 1901 they were 5·01. That is more than double?—Then the tables next deal with judicial separation.

333. That shows very few in the divorce court; there is no increase?—Practically none.

334. Do you draw any conclusion from that?—The conclusion I should be inclined to draw is that the latter remedy, namely, judicial separation, is less and less prized than it was; but it is a matter of speculation.

335. We can draw our conclusions from the tables?—Yes.

336. Since 1906 (you now pass to the judicial separation orders) magistrates' orders show a large increase?—That appears on Tables 11 and 12.

337. Then you say, "that the increase in such "orders is far in excess of the increase in population"?—That appears in Table 12; starting from 1893 the proportion per 100,000 of population of such orders was 2·86——

338. That is before the Act of 1895?—That is before the Act of 1895.

339. Perhaps you had better take 1896?—Then it was 17·67, and in 1908 it had risen to 20·63.

340. Showing an increase larger than the increase of population?—Distinctly.

341. Now, in England and Wales, the increase of divorce at the instance of husbands ——?—Might I just say I have had prepared, not for this purpose, but for the purpose of the judicial statistics, a table* showing in what counties these orders are made, and it is astonishing to note the great difference in the various counties. I think the table shows that Lancashire stands at the head of the list, at all events the figures shade away from something like 40 to 3.

342. Have you got the table showing that?—Yes, I have the table, which I will supply the Secretary with.

343. Does that lead you to any conclusion?—Well, the two inferences I draw from it are, first of all, that the causes which justify these orders vary exceedingly throughout the country. Lancashire stands first at 39·87 in 1907 per 100,000 of the population. Agricultural counties, as might be expected, show very few separation orders compared with these populous parts. For instance, in Dorset, Hunts. Cambridge, and Oxford that is so. Another conclusion is that the powers given under these various Acts are exercised somewhat differently by magistrates throughout the country.

344. Then you go on with the other table. "That "in England and Wales the decrees for divorces, at "instance of husbands, exceed those at instance of

* For Tables, *see* App. III., pp. 27-40.

* *See* Table XIIA.

" wives, though the difference seems to be diminishing." Is that Table 2 or Table 11?—That is seen at Table 2. The difference, however, is comparatively small. I think those at the instance of wives in the first five years were—well, I think it is a difference of about five per cent.

345. You mean they are tending to approximate?—Yes, they are tending to approximate.

346. (*Lord Guthrie.*) What is the meaning of 1895 in Table 2?—That was a defective return, I believe.

347. (*Chairman.*) " The decrees for judicial separa- " tion at the instance of wives greatly exceeded those " at the instance of husbands." Are those decrees of the magistrate or the court?—Those are decrees shown in Table 6—the court.

348. That is not as great now as it was as far back as 1858?—I have taken the average—the first five years, which is 23, and it is much about the same the last five years.

349. Then you mention that in the case of a very large proportion of marriages dissolved there are no children. Is that Table 15?—Table 15.

350. I see from 1904 to 1908 the average is 185 husbands and 178 wives, no children. One child, 111 husbands and 129 wives; two children, 79 husbands and 80 wives; three to six children, 82 husbands, 71 wives?—I think, taking the average from 1899 to 1903, there were about 39·9 of the cases in which there were no children. Taking the average from 1904 to 1908 there were 39·07 without children.

351. The next are interesting tables that I want to ask you a little more about. They are numbers 13 and 14. I think that wants a little more explanation. Are those tables which show the number of suits commenced according to the number of years which the marriages have lasted?—Those are the duration of marriages in matrimonial suits commenced in each year as compiled from the book which is sent by the Divorce Court to the Home Office.

352. Do you notice from that (this is a point that I think requires a good deal of explanation) that in the first year of the marriage there are scarcely any divorces?—Yes.

353. Between one and two years there are a few more; two to five it is increased, but the great bulk is between 5 to 10, or 10 to 20 years of marriage?—Yes, something like 40 per cent. of them are put in the period from 10 to 20 years.

354. How many from 5 to 10 years?—I have not worked out the averages there, but I should think it is somewhere about half of that.

355. More than that, I think. For instance, I have got in the last years, 1904 to 1908, 155 husbands' and 137 wives' in 5 to 10 years; and 188 husbands' and 189 wives' in 10 to 20 years?—Yes.

(*The Earl of Derby.*) 669 I make it out of the annual average.

356. (*Chairman.*) That is, two-thirds are after 5 to 20 years of marriage. I want to ask you about this, because this is a matter my attention was called to when I presided over the court. Do you draw any inference from that?—One would hesitate to be confident about any inference, for this reason. There is, as far as I know, no exact information as to the number of subsisting marriages which have lasted 10 to 20 years. As far as I know I do not think such information is to be obtained. Consequently one cannot be very confident as to whether or not this proportion—high though it is—is a very abnormal proportion. One would require to ascertain that; and it would add to the value of the statistics if the Census in future could give us some information as to the actual number of marriages of a particular duration.

357. I should like to ask you, because this matter was drawn to my attention repeatedly in court, whether one can obtain any explanation of that tremendous preponderance occurring after a considerable duration of marriage, and whether it is not due to the fact that amongst the poorer classes, in which the bulk of the marriages dissolved occur—a large proportion amongst the poor and respectable classes of life—of the stress of life. That is to say, I have seen myself (and you will say if there is anything in the suggestion), when the children have increased, the wages remaining the same perhaps, and the pinch of life is felt, the strain seems to affect the relations between the parties. It either creates, as I have seen in some cases, drunkenness, or other habits which have tended to dissolute manners. Have you thought of that solution?—I have thought of it, but I could not speak of it with any degree of confidence, having had so little practice in the Divorce Court; in fact, for the last 20 years, none. I would not venture to express an opinion upon that point.

358. Now, as to other countries, countries in which divorce is recognised, and as to which trustworthy statistics exist; you say it is increasing. That is Table 16?—Yes, that table is subject to some alterations which I should like to make. Substantially it is correct.

359. Will you alter it?—Yes, I hope to be able to give information as to certain years which are now in blank.

360. Perhaps you will fill that up afterwards?—Yes; and some slight mistakes have been made in printing it, but that will be rectified.

361. Then your next note, " That where recognised " judicial separation as distinct from divorce is also " increasing "?—I do not think that I have printed the tables with regard to that, but I shall be able to supply the table for that.

362. (*The Earl of Derby.*) I believe the figures in Germany include separation?—Yes, but I do not think that would affect the figures much. There are not very many. The net result of Table 16 is to show that, putting Japan aside, the United States show the largest number of divorces according to any test; that next and highest among European countries comes Switzerland.

363. That is an increase from 925 in 1887 to 1,494 in 1907; is that it? Germany is nearly double, or is it in proportion to population?—I am for the moment taking the test of population.

364. Then the point is that the increase in divorce is generally in excess of the increase of population?—Much in excess.

365. Much in excess in the United States?—I have taken some extracts for my notes, not merely from the United States reports, but a book written by Mr. Lichtenberger on the subject. Epitomising the facts and speaking of the United States, he says the married population a little more than doubled between 1870 and 1900, while divorce increased nearly five-fold.

366. Then we pass on to Italy, where divorce does not exist and only judicial separation is allowed. That has increased, but not so rapidly as in some countries in which divorce alone is recognised?—Yes, I shall be able to give figures about that.

367. Then you go to say, " The highest divorce rate " and the greatest increase among civilised countries " (Japan excepted) is in the United States of America; " in Europe the highest rate is in Switzerland," and so on?—The figures for Japan are far in excess of anything to be found here.

368. (*Sir Lewis Dibdin.*) One in six, is it not?—One in six, I think.

369. It used to be one in four?—Before the last Act in Japan, which is dated 1898, I believe, there was one divorce in three marriages. Since that time it is stated to be one divorce to six marriages.

370. (*Chairman.*) We have not got the law of Japan as to the grounds for divorce?—The United States reports give the Act of 1898.

371. Now you point out that in the same country there exists in different parts different rates of divorce. You have given a Table in your proof of 1906, 11 per 100,000 of the population in Bavaria, while Saxony has 32 per 100,000 of the population?—Both countries being subject to the divorce sections contained in the Act of 1900.

372. Saxony seems to have remained about the same, and Bavaria about the same. Have you any reason which enables you to account for that?—I think the first obvious explanation is that Bavaria is, broadly speaking, a Catholic country, which cannot be said of Saxony. The second reason is that Saxony, before 1900, was subject to laws which no doubt familiarised the people with divorce as a possible remedy for matrimonial troubles.

373. (*Mr. Rufus Isaacs.*) Is there one law for Germany now?—There is now one law for the whole of Germany as far as divorce is concerned.

374. (*Chairman.*) Now, what is the next point as to Switzerland?—Though Switzerland has now a federal law of divorce, there still subsist between certain cantons notable differences in the cases of divorce, and I mention the case of Geneva with a figure of 130, as compared with certain Catholic cantons with a figure of 10.

375. That may be the same explanation?—The same explanation.

376. Then France; the same thing in different parts?—Except that difference in religion does not explain it. In Brittany the resort to divorces is far less than in certain departments, notably departments centering round Paris. A much higher rate of divorce prevails in the latter than in Brittany.

377. Would you give us the next point you have in your proof?—"That the proportion of petitions "at the instance of wives is greater than that by "husbands, and appears to be increasing."

378. That is in other countries?—In other countries. "England presents exceptional figures; the petitions "at the instance of husbands exceed those presented "by wives." "As to the United States, almost exactly "two-thirds of the total number of divorces granted "in the period 1887 to 1906 were granted to the wife, "in other words, divorces obtained by the wife are "twice as numerous as those obtained by the husband. "In the United States the proportion is almost "stationary."

379. (*The Earl of Derby.*) Does that point to collusion, do you think?—No. In the first place one would have to take into account the fact that the causes for divorce in this country are not the same for the wife as for the husband. One would have to take into account that in certain other countries the causes for divorce are the same; and it is possible there is a certain code of honour prevalent here which, perhaps, does not exist to the same extent elsewhere. And the shrinking from publicity which exists here, perhaps does not exist to the same extent in other countries.

380. (*Chairman.*) Then Signor Bosco's report you referred to. What do you say about that?—He deals in his report with this difference, and speaking of a certain part he says: "In France, about two-thirds of "the petitions for divorce are presented by the wife," and he goes on to say in some other countries the proportion is greater, and he adds, what is really correct, that the proportion increases for separations, a remedy for which, when there is a choice, wives show more inclination than husbands.*

381. Then the next point is this. You say: "The "figures for Europe seem to show a higher divorce "rate in towns than in the country"?—I have not thought it right to print any tables which would show that, but I think the statistics which are available to anybody would show it. It is pointed out that in the United States there does not seem to be the same striking difference between the rate of divorce in towns and in the country as there is in other countries.

382. Do you draw any conclusion from that?—I am inclined to draw the conclusion that the causes which break up households, and which lead to divorces, are probably much rifer in towns—especially in large towns such as Berlin and Paris, to which this observation is particularly applicable—than in country districts.

383. And there are fewer in the case of married people with children than without?—Yes; and it would appear from the English table that that is fully verified by the statistics of other countries.

384. In the United States you say 38 per cent. with children, and no children, 40 per cent.?—The next sentence should be somewhat qualified. It is stated that, in Germany, in more than half of the cases there are no children. That should read "in Berlin."

385. But, in Austria, you get back to ½ per cent. with no children?—Yes.

386. Half per cent. means 50 per cent., does it not?—Yes.

387. Hungary, 38·6; Germany, more than half. That is Berlin, you say?—Yes.

388. And, finally, "The period of married life at "which the maximum rate of divorces occur varies in "different countries"; we have had that; and "in "the United States in the fifth year of married life." Do you draw any conclusions from that?—Well, it is a progressive country.

389. "That there appears to be no clear relation "between the number of divorces and the number or "variety of legal grounds"?—I venture to put forward that statement on these grounds. First, there are countries over which the same divorce law prevails, and in the various departments of which exist a great variety of rates of divorce, I also base that opinion upon facts pointed out by Mr. Lichtenberger in his book upon American divorce. He draws attention to the fact that, on the whole, legislation in the United States in recent years has been not in favour of increasing the facilities for divorce, but rather of diminishing the facilities for divorce, partly by lengthening the necessary time to found jurisdiction, and in other ways. Yet, that current of legislation notwithstanding, it is pointed out that the increase of divorce has gone on in the United States with, I might even say, increasing celerity instead of diminished.

390. With regard to your general observations at the end, perhaps you will just state what that is as to the figures?—Well, the observation I venture to conclude with is this, "That the figures, especially those "for certain foreign countries, are very imperfect, and "have not all been prepared in the same manner; that "they do not always distinguish between divorces "proper and annulments"; secondly, "That they "tell nothing of separations by mutual consent, and "desertions not brought to the notice of courts; or "households in which there is permanent estrange-"ment; they do not and cannot distinguish between "collusive and genuine proceedings." Speaking from one's knowledge of the English statistics, knowing the care that is taken by the Home Office to make them as correct as possible, and comparing them with some foreign statistics, I am inclined to think that, though correct in the main, many of the figures of foreign statistics must be taken with some considerable reservation.

391. Now you have been good enough to supply me with a few suggestions which you would like to make. Shall I ask you about them?—If you please.

392. Or will you kindly tell us what they are?—Perhaps I might read what I have written. "It seems "to me that in framing a law as to divorce three "kinds of interests in particular should be considered: "those of the husband and wife, no less those of "infant children, if any, of the marriage, and the "interests of society in the stability of a funda-"mental institution. Endeavouring to keep these in "view, I submit with diffidence,"—and I emphasise that—and a strong "sense of the difficulty of the "question, a few suggestions. (1) That there should "be always attempts at conciliation of reconcilement "before a decree of divorce or separation is made. "Even if, as is probable, nothing came in a great "majority of cases of such attempts, success in a few "would justify them. The procedure ought to differ "in this respect from that of a court mainly concerned "with questions as to property. It seems to me to be "the duty of the State, while making due provision for "dissolution of marriage in proper cases, to do the "utmost to effect reconciliation. It is to be noted that "the legislation of several countries"—I may say in many countries—"contains provisions for this." I think I told the Commission that there were figures which show that in Germany such a system had been attended with a fair degree of success. The second recommendation I venture to make is "that there "should be no decree or order for permanent separa-"tions. They punish alike the guilty and the innocent, "and are unfair to the latter. A state of permanent "separation is likely to be unfavourable to morality; "and it seems to me a great evil that thousands of "married couples are by magistrates' orders placed in "this position." The figures run into thousands.

* Annali di Statistica, 1908, p. 158.

393. It is over 7,000?—It is over 7,000. "It " cannot be right that men and women of 20 or " 21 years of age should be separated for life and be " debarred from marrying. Decrees or orders for " separation ought, it is submitted, to be only for " definite periods," as is the case in certain countries, " at most two or three years; at the end of which time " either party might apply for a divorce, the court, " after attempts at reconciliation, ordering a divorce, " or, in its discretion, ordering a further brief term of " separation. (3) It seems to me that divorce by " mutual consent, if such consent is long persevered " in, if there is no hope of reconciliation, and if the " interests of infant children are safeguarded, might " be allowed, subject to certain restrictions; decrees " on such grounds not to be granted during the first " two or three years of married life"—which is the case in certain countries—"not to be granted in the " first instance; the court ordering a separation for a " period; at the end of it the court granting the " divorce, if the parties are still of the same mind, if " reconciliation has failed, and if they have made such " reasonable provision as is in their power for infant " children. (4) As to divorce at the instance of one " party, it seems to me that there should be other " grounds besides these now recognised by law. I am " not prepared to suggest what all these additional " grounds should be; but it appears to me that " insanity, if lasting several years, and pronounced by " experts to be incurable, might also properly be made " a ground of divorce, always provided that the court " is satisfied that the petitioner has made the best " provision in his or her power for the safety and " comfort of the insane." Further, "I am in favour " of giving the county courts jurisdiction as to " divorce." I make the recommendation with great diffidence. "First, on the broad ground that, if the " legislature thinks fit to give a certain remedy, it " should not be withdrawn wholly or partly from any " class"—directly or indirectly—"by making the " remedy expensive or inconvenient. Second, en- " deavours to bring about a reconciliation, which ought " to be the duty of the judge, are likely to be best " exercised by one acquainted with local circumstances, " and within easy reach of the friends and relations of " the parties." Further, "It may often be desirable in " the interests of truth that such cases should be heard " in the district where the parties live. Fourth, the " circumstance that most other countries give divorce " jurisdiction to local courts deserves some weight." Two more suggestions I would venture to make, and that is, it seems to me that according to any just conception of a marriage law there ought to be equality of remedies for both sexes; and, lastly, there should be, as is the case, I think, in most countries, some better notification of the existence of divorce decrees. I find in the legislation of most countries it is required that there should be put upon the marriage register some notification of the existence of the decree. What I said at the beginning I repeat; I make these suggestions with much diffidence, with the knowledge that one has only a limited practical acquaintance with the subject, but with the strong feeling that the state of the law is not what it ought to be.

394. Just one word upon your first added suggestion about equality. You have looked at these laws pretty carefully. In the ecclesiastical courts there was equality. As far as judicial separation was concerned the ground was the same on both sides?—Yes, I think I am right in saying that from the first the Church insisted on equality of remedy.

(*Chairman.*) We are very much obliged to you for the help you have given. Do you ask anything, Mr. Spender.

(*Mr. Spender.*) I think he has raised too big issues to cross-examine at the moment. Do you mean as to the whole?

(*Chairman.*) On any point.

395. (*Mr. Spender.*) May I ask what precedent there is for divorce by mutual consent?—There are several countries in which that is granted. I think, for instance, in Norway and most of the Scandinavian countries.

396. Does it lead to a great increase in the number of divorces? When it is in operation is it a material factor?—As far as the figures I have collected show, there does not seem to be anything very remarkable in the increase. I think in the majority of the States of the American Union there is no such mode of divorce recognised, but divorce has increased very much there.

397. Could we get any information as to countries of that kind, as to the proportion of cases where that is done?—The statistics of some countries do give that information. I am not prepared to say which.

(*Chairman.*) I might perhaps suggest to Mr. Spender that if he looks at the little table ——

(*Mr. Spender.*) I was asking if we could get at the proportion of cases for which that particular cause is responsible.

(*Witness.*) I think there are some countries as to which that can be given.

(*Mr. Spender.*) Might we ask for that?

(*Chairman.*) Certainly.

(*Witness.*) I cannot give them off-hand.

(*Lord Guthrie.*) Mr. Spender, would you enlarge your question? It would be very important to know in these different countries to what extent the relaxation is felt of insanity, crime, drunkenness, and desertion.

(*Witness.*) Several countries give an analysis of the causes.

398. (*Mr. Spender.*) If we could get some analysis of the causes not in operation here and see their results we could isolate those causes?—I could furnish that. I have not them in my mind just now, but I can say that certain countries do profess to give an analysis of the causes.

399. Broadly speaking, as it is analogous to that, what effect upon the number of divorces has granting of equality of remedy to both sexes? Do you consider it a very important factor in the increased number of American divorces, for instance, where the remedy is equal?—That again is a highly speculative question. I should surmise it had a considerable effect.

400. I think we have women's divorces separated from men's in your American table?—Yes.

401. And that would give us a fair indication of it, I suppose?—Yes.

(*Chairman.*) I think it would be very convenient to draw attention to this. In this little table countries are specified in which there is agreement. On page 2, "Austria: Jews. Adultery, immoral life, malicious desertion, &c." "Belgium: adultery of wife, adultery of husband." Then there is Roumania, with the consent of the parties in manner prescribed by law.

(*Mr. Spender.*) Have we got the American divorces separated?

(*Chairman.*) We are going to have those separate. Could you supply to us what Mr. Spender asks for—a table showing ——

(*Witness.*) Do I understand Mr. Spender to ask first, in what countries there is equality in regard to the remedies?

(*Mr. Spender.*) Yes, that is one question.

(*Witness.*) And, secondly, whether, where there is an equality, there is an abnormally rapid increase of divorces?

(*Mr. Spender.*) Yes, and thirdly, whether women's petitions show a large increase in those countries?

(*Chairman.*) I think we can get that—perhaps Sir John can help us—in the American reports. In Austria, at page 398, the causes are given, and mutual consent is amongst them. It gives the figures of each class of case.

(*Mr. Rufus Isaacs.*) Does that give the number for each cause?

(*Chairman.*) Yes.

(*Mr. Spender.*) Only they do not seem to be separated into the sexes.

(*Witness.*) In preparing the English judicial statistics, I attempted with the assistance of gentlemen at the Home Office to analyse the causes of divorce, but it is an analysis which is by no means easy, because it may be divorce is obtained not for one cause but for more than one. That difficulty would be magnified in the case of foreign countries, where there are a large number of causes for divorce. It may be that

the statisticians in these countries have overcome that difficulty, but it is a manifest difficulty where there are several causes.

(*Lord Guthrie.*) They can divide the statistics between adultery and desertion.

(*Witness.*) That is tolerably easy, but when you have five or six, or perhaps more causes of divorce, and the decree has been granted upon several, it would be very difficult to prepare the returns.

(*Chairman.*) May I suggest this, that the secretary looks through the book, and takes out those cases of mutual consent, and compares them with the total number of other cases.*

(*Mr. Spender.*) Yes, I think that would meet the case very well, and then if we could get some rough idea as to the number of divorces that causes which do not obtain in this country are responsible for in other countries—roughly the cases in which they are alleged—we shall have some indication as to their importance where they are in operation.

(*Chairman.*) That is to say, causes that are not recognised here.

(*Mr. Spender.*) Yes.

402. (*Mr. Rufus Isaacs.*) You have answered the main points I want to ask you upon, except on one matter. You included in one of your suggestions that the county courts should have jurisdiction. Have you considered in that connection the functions of the King's Proctor, because it always occurs to me as one of the matters that must be dealt with?—That point had not entirely escaped my attention, though I may not have given due importance to it. It does seem to me that if one recognised the existence of divorce by mutual consent, subject to certain conditions, the reasons perhaps for the intervention of the King's Proctor might not be so strong, but, even if that were not so, it would, I suppose, be possible to devise some machinery by which in country districts some officials would be charged with duties corresponding with those of the King's Proctor. I had not forgotten the difficulty, though I may perhaps have undervalued it.

403. I only wanted the benefit of your view if you have any, because if you have not divorce by mutual consent, and the law still continues that you should have no collusive and consenting divorce it would be very necessary to have the King's Proctor, or else you would have the effect of a law which *ex hypothesi* is not to be passed?—I think if there is no divorce by mutual consent that would be so.

404. It would mean you would have to have some official in each of the courts charged with the duties of the King's Proctor?—I do not say in every court. There would probably be some officials whose business it would be perhaps not to see merely to one or two courts, but to several. But I venture to suggest that, if there is divorce by mutual consent, safeguarded in the manner I have indicated, the occasions for his intervention would be few, I think.

405. But I was considering it apart from that for the moment?—Yes.

406. If you have mutual consent, no doubt it becomes an easier matter. But supposing you have not, then if you are to confer jurisdiction on the county courts you would equally have to confer jurisdiction on some official who would act as King's Proctor in these district county courts on which you have conferred the jurisdiction?—Assuming that his intervention is advisable or necessary, then I think that would follow.

(*Chairman.*) The report we made will have to be reconsidered. We only suggest that there should be a King's Proctor in London, and that some officer would report to him, and that the intervention should be in London, and no decree absolute be made except by a decree in London.

(*Mr. Rufus Isaacs.*) That would mean that some official would have to report. He would have to do what the King's Proctor does here. I quite appreciate that, but that means the actual intervention in the form of a suit would come before the court in London; but the more important matter, if I may venture to say so, would be the obtaining of information on which the King's Proctor could intervene.

(*Chairman.*) At present he receives his reports from all over the country.

407. (*Mr. Rufus Isaacs.*) Yes, I only wanted to know if Sir John has any suggestion to make as to who should be charged with that duty?—No, I did not go into that in detail, though I did not entirely lose sight of the point mentioned.

408. Have you formed any opinion as to the safeguards which it would be necessary to have before a divorce could be granted by mutual consent?—Well, I did call attention in my suggestions to some of these. In the first place it should be consent, to use words which are employed I think in some of the foreign statutes, long persevered in. It must be by parties who are of a certain age; in some countries I think the minimum age is 25. Further, I think it ought not to be granted unless there is clearly no hope of reconciliation. Further it appears to me that the interests of the infant children, if any, should be safeguarded, and also that in the great majority of instances it ought not to be granted in the first instance, but that it should be preceded by a term of separation for a period, at the end of which the parties would come before the court again. I venture to think these would be sufficient safeguards.

409. As I understand it, your suggestion is based upon your study of legislation of other countries in this respect?—Very largely, yes.

410. I am not quite sure, because I have not exhausted the study of these tables of legislation, but is there any safeguard you have suggested there which is not in operation in one or other of the foreign countries?—I do not think there is any, except as to one as to which I am a little doubtful. I do not find in my reading and inquiries that the interests of infant children are made so prominent a feature, even if they are taken into account, as I would venture to suggest they should be. But, subject to that qualification, I think I am only repeating what is to be found in one or other of the various modern statutes.

411. (*Sir George White.*) You called attention to the great variation in the number of separation orders in different parts of England, varying from 42 to 5. You named Lancashire as the highest. Can you name the county or counties where it is as low as 5?—I have the figures before me here. Dorset is 2·38 per 100,000; Essex is about the same; Hunts is about the same; Cornwall is also nearly at the bottom of the list.

412. Then may we take it broadly that the purely agricultural counties are at the very bottom of the list and the manufacturing counties highest?—I think that would be, roughly speaking, a correct epitome of these figures.

413. Have you formed any idea as to whether factory working has any relation to this great divergence?—I would not venture to presume ——

414. You would not put it all down to the difference of administration?——

415. (*Mr. Brierley.*) What is the figure for the West Riding?—I am sorry to say that Yorkshire has been given as a whole, and not split up. The figure for Yorkshire is 28·48, as against Lancashire 41·99.

416. (*Sir George White.*) I suppose there is practically the same difficulty with regard to the statistics showing the grounds of separation as there is in the matter of divorce. There are no statistics which would define the grounds of separation?—The grounds of separation must be, as far as magistrates' orders are concerned, few. There are those to be found ——

417. Yes, I know what the grounds are on which magistrates may feel at liberty to grant separations, but there are no statistic tables to show whether it is drunkenness, for instance, or cruelty. I suppose they would be combined in the same way as you said you could not separate divorce statistics?—I do not know that I quite appreciate the question. The statistics under the head of summary convictions would show the various offences such as are mentioned in the Act of 1895 and in the subsequent Act. But that is all the information, so far as I know, which would have a bearing on the question you put.

* Chapter V. Special Reports of the Census Office—Marriage and Divorce, 1867–1906, Part I.

418. Then you also suggested a greater equality of remedies for both sexes. I suppose you would also suggest a greater equality of remedies for classes as well as sexes, and with that idea you recommend jurisdiction for the county courts?—That is one of the reasons which weigh with me in thinking that jurisdiction should be given to the county courts. The expense in the county courts would be in a great majority of instances distinctly lower than the expenses in the High Court.

419. Have you any means of knowing the class of court in Germany? You said there were 170 ordinary courts that exercised jurisdiction. What class of court would they be?—The Landgericht, which has unlimited jurisdiction; these courts are scattered all over the country.

420. (*The Earl of Derby.*) I suppose you have no figures which would tell usin any way where separations were sought for in preference to divorce, because of the expense involved in the latter?—Do you mean ——

421. I mean a man or woman applying for a separation in preference to a divorce because a divorce was too expensive to be indulged in?—That remedy would not be invoked by the husband.

422. You have no figures?—No.

423. And no opinion you would care to give, I suppose?—I should think the application would be made in entirely different circumstances and for entirely different motives.

424. (*Mrs. Tennant.*) In the figures you have given you distinguish between the counties. Do those distinguish between the applications made by the wife and those made by the husband?—In most cases I think they do.

425. Are you able to tell us, in Lancashire for example, what is the percentage granted to wives and what to the husbands?—The applications made under the Summary Jurisdiction Acts? Oh, they would be applications by the wife.

426. (*Mr. Brierley.*) Except under the Licensing Act of 1902?—Yes, with that exception they would be all made by the wife

427. (*Mrs. Tennant.*) I did not quite gather if you thought the judge was the most fit person to undertake the office of reconciliation?—I should think that he would not only naturally, but inevitably, be the person. I understand that in Germany the parties have in the first instance to go before the inferior court—the Amtsgericht they call it—and if the attempts before that tribunal to reconcile the parties fail, the matter passes on to the Landgericht. My notion was that the parties should in the first instance come informally before the tribunal; that the judge should see the parties, probably in private, and endeavour to reconcile them. If he failed, the matter would go on in the ordinary way.

428. (*Lord Guthrie.*) I notice in Table 18 you have the year 1909 left blank. Would you be able to give us that before very long?—I hope not merely to fill up blanks, but to give somewhat later years.

429. 1909 you have given the heading for, and you will be able to give us that within a few months, will you?—1909 I am not sure about. The figures for 1908 I think I will be able to give in some instances.

430. I notice in Scotland you do not give any percentage per 100,000?—No, I do not.

431. But you will be able to give them?—Yes; in fact, at my request, a gentleman at the Home Office wrote to Scotland for certain figures, but they have not come.

432. Do you think if there has been experience in Scotland for 350 years of equality between men and women, and free access by the very poorest to the remedy for divorce, and if it has had the experience of 350 years of desertion as a ground for divorce, that that is important for the Commission to know?—As a Scotsman, and for various other reasons, I think it is almost an unanswerable argument for a similar policy.

433. Is there any other country you know of where the conditions in this connection, and the people are more similar to those in England?—I can think of none.

434. Now, if it be the case that in England the proportion per 100,000 is 2 per cent., and that, in Scotland, where desertion is added as a cause with equality between men and women, and with free access for the poorest, the proportion is 4 per cent., do you see any reason to anticipate that if the law of England were assimilated in these three respects to the law of Scotland, that there would be a substantially larger number in England than we have in Scotland?—No, I see no reason for thinking on the one hand that there would be less or for thinking on the other hand that there would be more.

435. It might be, I suppose, that at first there would be a large number of divorces if the law were changed; but would you expect, once matters had settled down, that there would be any substantial difference?—No, I think the histories of various Divorce Acts show that one of the first results in passing a Divorce Act is, that there is an increase for a time. Certain cases which have accumulated for some years are, so to speak, let loose, but after a few years the rapid increase sinks,* and I should anticipate the same result here.

436. Then if we have found in Scotland for 350 years that those three elements have not tended, as compared with England, to lessen the sense of the sacredness of the marriage tie, would you anticipate any different result in England?—No, on the contrary, my anticipation would be on the whole that it would lead to a somewhat, I venture to say, higher conception of marriage; a conception of marriage in which the rights and duties of both parties and both sexes were the same.

437. Then, if it be the case that in Scotland the result of a woman committing adultery is that she knows that on being found out she will lose first her position in society; secondly, all access to her children; and, thirdly, her sole means of support; do you think that that carried out in England would tend to immorality or the other way?—I should think it would tend distinctly in most cases the other way.

438. As a deterrent?—As a deterrent.

439. Can you tell me is there any table that would enable us to know the occupation of the husbands, so as to see to what extent the poor have access in England?—I have prepared, or to be accurate, I instructed a gentleman of experience to take the cases for two years, 1907 and 1908, to go through the petitions, and to examine the occupations of the husbands. There is extreme difficulty in arriving at a correct analysis, because a large number of the descriptions are ambiguous. For example, a husband is described as an engineer. That may mean a man earning a very small wage, or it may mean a person with a large salary. But I instructed him to eliminate all doubtful cases, and he prepared a table, which I shall hand to the secretary. I am not sure that I have it with me, but I think that I am within the mark in stating that it showed, eliminating doubtful cases, something like 30 per cent. of persons who were probably wage earners.

440. We shall have access to that table?—Yes.

441. Shall we have access to a similar table showing the localities, so as to show to what extent distance from London prevents people getting a divorce?—I can supply no such information, I am sorry. Nor do I think it could be supplied.

442. It would be important?—It would be very important.

443. There is this difference between Scotland and England in the matter of locality, that the people in Scotland, away from Edinburgh, are comparatively few—the other places being very thinly populated; while in England it is quite the opposite, because those large places far from London—the big commercial centres—are very thickly populated?—Yes, quite so. Mr. Gladstone, in 1857, said that the Act would concentrate the business in London, whereas formerly, before the Act, such relief as had been given by the ecclesiastical courts was given by courts scattered all over England. He called attention to the state of things in Scotland; and, if I remember rightly, he drew attention to the circumstance that it would appear that the great

* *See*, as to Australasian figures, New Zealand Official Year Book, 1907, p. 172.

majority of petitioners in Scotland resided in Edinburgh or Leith, or in the neighbourhood. It may be that your suggestion is the explanation of that fact.

444. Then you said there had been an increase in the divorce cases in England out of proportion to the population. Assuming that does not apply to Scotland, but, on the other hand, an increase in England had not been proportionate to the increase in population, can you account for that?—I think one could not account for it without going into an analysis of the difference of the national temperament and habits.

445. In your view are not there causes which would account for the increased number of divorces apart altogether from any decay in the public sense of the sacredness of marriage. Such as, for instance, increased facilities of communication, and such as women now being able to support themselves and their children if they divorce their husbands, where they could not formerly do it, and also that women now will not stand what they formerly submitted to?—I should surmise that these considerations were operating very powerfully.

446. Then, in your view, does not it necessarily follow that there has not been that decay that some people seem to think in the sentiment in regard to marriage merely because there is an increase in the number of divorces?—That is a highly speculative question.

447. At all events there are causes other than that?—Obviously.

448. (*Sir Lewis Dibdin.*) With reference to the answers you have given to Lord Guthrie—that last observation of yours, that you must take into consideration the differences of national temperament between the English and Scotch; I suppose that runs right through this subject, does it not?—I should think so; I should think that observation is true of every country and of every part of every country.

449. Therefore we ought to be cautious in making comparisons between England and Scotland; not that they should not be made, but that in making them we should make allowance for the differences of national temperament?—They seem to me to be, not conclusive, but highly instructive.

450. In confirmation of your view that it would be wise to have some method or possibility of conciliation at the preliminary stage of divorce; is not that practically what happens now in a great many of the police courts with reference to the separation orders. Is it not the fact that there are efforts made in a great many courts when a summons is applied for, and before any order is made, to bring the parties together, often with a great deal of success?—I speak with very imperfect information with regard to that, but I believe that is done to a very large extent, though when one looks at the high figures one is inclined to think it might be done more often.

451. I want to ask you a question or two with reference to your memorandum on the History of Divorce. I am reading from, I think, the third page at the beginning. I take it that the Church in early days declared marriage to be sacred and indissoluble, but that position you say was not taken up definitely and distinctly from the first. Am I right in supposing that the range of difference between the indissolubility and dissolubility theories had reference very largely indeed to the question of adultery?—No doubt very largely to that and the question of second marriages.

452. So that it was chiefly whether or not where adultery had taken place there could be a divorce with re-marriage?—As far as I know the history that is substantially so.

453. Then you draw attention to the differences of views of different fathers and authorities of an early date. Would it be true to say that the vast preponderance of authority was in favour of the indissolubility of marriage?—To define my own position, I have read a good deal on this subject before preparing this memorandum, though probably I had not read enough. My impression is that it is an exceedingly difficult question. I have read volumes written by scholars who have examined this subject; I have consulted a good many authorities; and it would be very hard to say which way was the preponderance.

454. You have quoted Esmein's book; it is a very high authority?—Yes, a most admirable book.

455. I agree, if I may say so. He has no doubt that the preponderance of authority was on the side of indissolubility?—I think that was his conclusion, but if I may refer you to some other authors who are equally confident that the preponderance is on the other side. For instance, take the argument by Bishop Cosin, where he collects the authorities——

456. I am going to ask you about that. Are you acquainted with what, I think you will agree, is a standard work in England, Mr. Watkins's book on the patristic arguments?—No, I have not read that. I have consulted, not only such English authors as Selden, Bingham, and Thorndike, among others, but, besides original authorities, a good many German and French books on the subject.

457. I only want to get your opinion. You are not prepared to say that there is a preponderance on the side of the indissolubility?—No, I am not.

458. Then you have referred us to St. Augustine. I suppose it is common ground that St. Augustine was very strongly in favour of indissolubility—chapter after chapter?—Chapter after chapter, and particularly in the treatises I have referred to,

459. You have referred us to two passages where he expressed doubt as to his views, you told us?—Yes.

460. But have those passages any reference at all to the problem that we are considering?—I think they have.

461. I just want to put my point to you. Were not they really about—not a totally different, but a very different subject, namely, the question of marriages of non-Christians, which was a very urgent problem in his day, where the marriage was not a sacrament, and the Church held that such marriages were dissoluble?—I am not an ecclesiastical lawyer, and you are, but not merely is doubt expressed in that passage to which I have referred—doubt is expressed by him in another book, his Retractations.

462. Yes, but let us take the first, first. I do not want to take up your time unnecessarily, but I thought you would be in a position to admit that the context of that passage shows clearly that he is not speaking of the general problem, but the problem of what you know as the Pauline privilege. If you tell me that is not so I will leave it?—Again you have the context present to your mind, but I think a passage occurs at the end stating his general position, and if one were to go a little further into this subject, I have in my notes here a reference to other statements by him on the same point.

463. Let us deal with the Retractations. That has reference, has it not, to what they called spiritual fornication, that is to say, idolatry?—I have not his words here, but if I remember right, in the long list given of Retractations he mentions specially what is stated here.

464. I suggest to you that the whole context has nothing to do with the general problem, but with the special phase of it which is called spiritual fornication, where one party to a marriage is guilty of idolatry. You do not accept that?—As far as I remember the context it is much wider than that.

465. Then on the next page you told us about the long struggle carried on by the State and the Church. Is that quite a correct way of describing it? Would you agree with this statement, which I think is Esmein's, that the Church existed under the conditions where the laws were non-Christian and allowed divorce; where the State allowed divorce; and the Church existed in a State of that kind; that the Church could only impress its views by spiritual discipline on the authority, and had no power to over-rule any laws of the country; and, therefore, while its principles remained strong for indissolubility, it had to show what Esmein calls a large tolerance with actual fact when the people of the country obtained divorces? Would you agree that that is a fair statement of the position?—It is rather a long question.

466. I am sorry. But you spoke of a struggle. What struggle could there be between the Church and

—say—the Roman State—the empire?—My observation extended to a time when some of the emperors were Christians.

467. Let me put it in another way. I think you have considered the law and the decrees of councils on this subject, and some of the penitentials. Now, the penitentials were a scheme of private discipline, were they not?—Do you refer to Archbishop Theodore's Penitential?

468. Yes, and a great many others; and you said, quite truly, that they allowed divorce. Now, those were really for private discipline between a layman and his priest. Is not that so?—That would be substantially accurate—yes.

469. But the laws of the councils were spiritual laws—laws of the Church. Now, I want to ask you, is there not this distinction between the canons and the penitentials, that while the canons uniformly disallow divorce, the penitentials more or less admit it?—That, again, is a question which I should not like to answer—that all the canons do.

470. Well, I suggest that to you. Now you have told us about the conditions or obstacles, impediments, "disparitas," and so on, and spiritual affinity?—Very imperfectly.

471. No; I listened with great interest to what you said; and it was rather suggested to you that those were probably invented with a view of getting round the question of indissolubility. Now, you have considered this matter a great deal; would it be fair to say that it was due to any one particular cause?—I do not think it would be fair to attribute it to any one.

472. I suppose it was very largely due to the spirit of the age, which was an intensely logical spirit. The schoolmen ran logic-mad, did they not?—These distinctions were the work of certain schoolmen, such as Peter Lombard and Yves de Chartres.

473. Who worked out these distinctions from the idea of the sacrament in marriage?—Yes.

473*a*. Now, when we come to the Reformation: you have pointed out there was then an enormous change in the way marriage was treated. Is not the real point there that the idea of the sacrament was given up, and that the other sanction that remained was the binding force of our Lord's words as to divorce, and that that covers the whole of the post-Reformation laws on this subject?—I have no doubt the change of view with regard to the matter not being a sacrament had an enormous effect.

474. That being the case, are you right in saying that the majority of the Reformers regarded marriage as dissoluble? I observe in your category you do not quote any English Reformers; but can you tell us whether the English Reformers, who devoted a good deal of attention to this subject, were, as a body, in favour of the dissolubility of marriage, or not?—I have collected a large number of extracts from various writers—chiefly divines of that period. I have not thought it right to put them into these notes. Many of them are undoubtedly in favour of the view of dissolubility, but whether they are the majority, or not, I am not very confident.

475. Do you agree with this position; that where the post-Reformation writers approved of the dissolubility of marriage and accepted that, it was on the ground of adultery, following our Lord's words, or their view of our Lord's words?—That, no doubt, is in the main true; but some of them laid stress upon desertion.

476. I am speaking of the English writers?—In the main, I think that would be true of the English writers.

477. Can you remember an English writer who relied on anything except adultery?—Off-hand, I cannot, but I think I shall be able to name some.

478. I am afraid I must bother you a moment about the Reformatio Legum. You attach great weight to that, I observe?—It appears to me to be an important document.

479. And you say it seems to be a statement of what was conceived by eminent ecclesiastical lawyers to be, or ought to be, law. I quite follow "ought to be," but is there any ground for saying that anybody supposed it was the law?—Well, I do not think, as far as I can form an opinion upon the subject, it was clear what was the law at that time. Again, I must frankly say my information about the Reformatio Legum is drawn from Burnet's account of it and Strype's account of it, and one or two other authorities.

480. Let us see if we agree as to what the Reformatio Legum was. You say it was brought about by the statute of 25 Henry VIII.?—Yes.

481. Then you say the death of the king prevented the commission being formed in his reign. Is that quite accurate? — There were several intervening statutes which I have passed over.

482. But the second statute. The 25 Henry VIII. was revived later?—Yes.

483. You say you are familiar with Strype's account?—Yes, fairly.

484. May I remind you, he gives a long account of the Reformatio in its relation to Henry VIII., and of his neglect to ratify it. Do you remember that?—The Reformatio Legum, as published at the present day, has at the beginning of it a letter in Henry VIII.'s name requiring its sanction.

485. Which he never signed?—I believe that is so.

486. So that as a matter of fact the Reformatio was produced in Henry VIII.'s reign, was it not?—I believe that is so.

487. And no effect was given to it in Henry VIII.'s reign?—Yes.

488. Then it was brought up again in Edward VI.'s reign, was it not?—Yes.

489. And no effect was given to it?—No.

490. Then I think you will agree with me it was brought up again in Queen Elizabeth's reign?—Yes.

491. About 1573?—Bishop Stubbs mentions it was brought up several times.

192. And again no effect was given to it?—Yes, that was pointed out.

493. So it was brought up at least three times but not sanctioned. What inference do you draw from the fact of its reiterated production and its reiterated rejection?—The inference I draw is that these were troublous times; that the religious opinions of the rulers varied from reign to reign, and consequently there was no settlement of such an important document as this.

494. But there was nothing so troublous about 1573—just the time when the articles were legalised. What I suggest to you is that it shows for some reason the authorities did not think the Reformatio Legum would do?—It was not adopted.

495. Then is it quite fair to treat it as (I think you will admit you are really following the Report of the Royal Commission in 1857) if it represented the course of practice at that day?—I am aware of some of these difficulties. I added the words "to be" or "ought to be."

496. Again quoting the Divorce Commission report, you say: "There seems to be some evidence that, at "all events, for more than half a century, from the "year 1550 until the year 1602, marriage was not held "by the Church, and therefore was not held by the "law, to be indissoluble!" Is there any evidence at all of that?—Well, the evidence, such as it is, may consist of these facts ——

497. The Reformatio?—No; also the Marquis of Northampton's case.

498. The Marquis of Northampton's case was in 1548?—Yes.

499. That was in Edward VI.'s reign. It was an entirely isolated case, as far as we know, was it not?—Apparently.

500. And although the decision was given by some Commission that the marriage was dissoluble it was yet considered necessary to have an Act of Parliament?—Yes, it was confirmed.

501. So that looked as if they were not satisfied with the decision of the court, did it not?—I do not know whether that inference can be drawn.

502. Now, how could there have been any power in the ecclesiastical court at that day to dissolve a marriage? Let us go by steps. Prior to the Reformation there was no power, was there, to allow a divorce *a vinculo*?—No power.

503. There was no statute in Henry VIII.'s reign or at the Reformation to alter that?—No.

504. The Reformatio Legum would have altered it if it had been legalised, but it was not legalised. Now, that being the state of things, how could any Church Court after the Reformation have granted a divorce *a vinculo*?—In the first place I attach great importance to the expressions of opinion of eminent lawyers on the Divorce Commission, which I repeat in my memorandum. In the second place, there was a common law doctrine with regard to marriage. It is true it had not been worked out elaborately, but there are sentences in Britton and Bracton, and I think also in Glanville, which are at all events susceptible of being interpreted as showing that there was a power of divorce.

505. But there is not any decision of any court dissolving a marriage after the Reformation, until you come to Lord Northampton's, followed by the Act of Parliament?—As far as I know, that is the first.

506. And you said there was no change by statutory law which existed prior to the Reformation?—As far as I know there was none.

507. Now the first case you give is Foljambe's case, was it not?—Yes.

508. Which decided that a divorce *a vinculo* was impossible in the then state of the law?—We seem to know so little about that case. There are three different reports, and they are very imperfect reports, and according to one of them it is a decision of the Star Chamber; according to another it was an opinion expressed—or they relied upon an opinion expressed—by the Archbishop of Canterbury, who said he had called to himself at Lambeth certain divines and civilians.

509. He would be a member of the Star Chamber, would he not?—Yes.

510. Is there any doubt that Foljambe's case was decided in the way you suppose?—If you put to me the question, I have seen statements to the effect that none of these reports I have cited do give the real substance of the case. In a book written by Professor Craik he gives a very different account of it. I have not got it here.

511. Does it differ in the result that a divorce *a vinculo* was impossible?—It does not differ as far as to state that an expression of opinion to that effect was given. Whether that expression of opinion was necessary for the actual decision of the case was not clear.*

512. But all the reports you have been so kind as to collect—three in number—agree as to the result?—They agree as to the result.

513. Now, you have referred to Bishop Cosin's opinion and said you put great stress on it?—I do not think I used those words.

514. Well, I thought you said so, and I was rather surprised to hear it?—No, I do not think so.

515. I think there is some mistake with regard to this. You say the decision of Bishop Cosin in the Duke of Norfolk's case was in 1700. You probably know Bishop Cosin had been dead 30 years. It was not in the Duke of Norfolk's but in Lord Ross's case?—Yes, in Lord Ross's case.

516. But I do not think that is your mistake. I think that is a mistake of the Report of the Royal Commission of 1857?—Yes, they referred to it in that way. It is Lord Ross's case.

517. That is not at all an isolated incident of a real blunder in the Report of the Royal Commission of 1857?—Well, I have not discovered such.

518. It is pretty notorious that that report was not drawn up with the amount of consideration and knowledge that it ought to have been?—One has heard that, but great names are attached to it.

519. Now, that opinion of Bishop Cosin; you say you do not very much rely upon it?—It is an important and interesting confirmation of the opinion, and it collects a number of authorities.

520. I shall not detain you by asking questions in detail about it, but I daresay you are aware that it is so full of inaccuracies that in the critical edition of his works the editor gives it up over and over again and says it must be misreported?—I have seen severe criticisms of it.

521. You remember he quotes Lancellottus, the Blackstone of ecclesiastical law?—I do not remember that. I am not here to suggest that his opinion is conclusive.

522. But I think it is very important, because you attach great weight to the Report of the Commission of 1857. The Report of the Commission of 1857 rests almost entirely on this point on Sir John Stoddart's evidence?—Yes, largely.

523. And Sir John Stoddart said he rested himself on Bishop Cosin?—Yes.

524. Now, do you remember he quotes Lancellottus for the proposition that divorce is a dissolution of the marriage?—You have evidently read it much more recently than I have.

525. And do you remember the actual passage in Lancellottus who in the same sentence goes on to say that separation *a mensa et thoro* may not incorrectly be called divorce?—I do not remember that.

526. And do you remember that latter half of the sentence is omitted by Bishop Cosin?—I do not remember.

527. Now about the canon of 1604. Why do you refer to it as 1597?—Do I?

528. I think we must mean the same thing, but it is on the same page where you refer to the Northampton case. You say: "Other facts and circumstances seemed "to the Divorce Commission to support a similar "conclusion, and among them these: the words of "the 105th canon (1597), which appear to distinguish "between dissolving and annulling marriage; the terms "of the 109th"—that ought to be 107th Canon—"which require in all sentences of divorce and separation a mensa et thoro to give a bond." You have framed that carefully; you say, "Seemed to the Divorce Commission." May I take it that it does not seem so to you?—I am not prepared to say it is a very strong argument.

529. May I put it in this way. Have you heard of any modern authority who supposed that the Canons of 1604 on the subject of divorce meant divorce *a vinculo*?—I will not go further than this, to say it is not, I think, a very strong argument.

530. But those are the arguments on which the Report of the Commission of 1857 grounded itself, did it not?—Mainly, though not entirely.

531. That, and the proposition that for 50 years there were divorces *a vinculo* granted in England?—Mainly those arguments.

532. Now having got over that we come to the time when special Acts were passed?—Yes.

533. And those Acts assumed that ordinary law would not provide for divorce?—At that time there could not be a question as to the point.

534. There were only two or three of those special Acts until the beginning of the 18th century?—The history is given in the Commission's report.

535. Then I suggest we have arrived at this, that so far as we can tell, since the Reformation until the Divorce Act of 1857 there has been no divorce *a vinculo* allowed in England except by special Act of Parliament?—With that exception, yes.

536. Subject to the questions I have asked you?—Yes.

537. And going back; in the Church before the Reformation from a very early date the Church, so far as it could, has declared for the indissolubility of marriage?—That is absolutely clear.

538. Perhaps this position was taken on different grounds after the Reformation, but on grounds which seemed to the Church adequate?—Yes.

539. So it would not be true to represent the position of the Church in the West, as having to any large extent admitted the dissolubility of marriage at all.

(*Chairman.*) Which Church?

(*Sir Lewis Dibdin.*) I say the Church in the West.

* "The wrong with which he (Foljambe) was charged "was this illegal exclusion of the rightful tenant, and the "riot or disturbance which he had thus excited. That alone "was the charge upon which the Court could give judgment" —Foljambe's case, Appendix II., The Romance of the Peerage, I., p. 416.

(*Chairman.*) Well, there is the Scotch.

540. (*Sir Lewis Dibdin.*) I prefer my own word the Church in the West as excluding the Church in the East?—Excluding very early times about which there must be doubts; excluding an uncertain period of 50 or 60 years as to which there may be also doubts, it is quite clear that the opinion of the Church was uniform and distinctly in favour of indissolubility.

(*Sir Lewis Dibdin.*) The Church in the East having adopted a different plan, or followed a different course. Then we get to modern times; I do not think there is any difference there between you and me, Sir John.

541. (*Judge Tindal Atkinson.*) I only have one question to ask you—with regard to the intervention of the King's Proctor if proceedings were taken in a county court. Do you know of any courts in the Kingdom that have such facilities for getting information concerning the inhabitants of the district within the county court, than the county courts themselves; the registrar and high bailiff, and all the staff of bailiffs which are associated with the county court procedure? Does it not strike you the county courts have greater facilities for getting information than almost any other court in the Kingdom?—I should have thought the judges and the officials of the court would be more likely to be in touch with the inhabitants than the judges or officials of a court sitting, it might be, hundreds of miles away from the locality.

542. (*Mr. Brierley.*) Only one question I want to ask you, arising out of your second suggestion with a view to the amendment of the divorce laws. Have you any figures which show how many petitions for judicial separations are presented in England by Roman Catholics?—No, I have not.

543. Because your suggestion that no decree should be made for permanent separation would really debar Roman Catholics from all matrimonial relief?—I have no figures with regard to that.

544. But I am afraid that would be the result, would it not?—That is an important consideration, and whether or not provision should be made for them is worth considering. I think notwithstanding that objection I should adhere to my opinion.

545. You had considered that?—Yes.

546. (*Judge Tindal Atkinson.*) Are there any authentic figures showing the percentage of divorces to marriages, not population?—Of the number of subsisting marriages, do you mean?

547. Take the number of marriages for one year, what is the number of divorces to those marriages in that year?—I have not worked out those figures, but it could be done quite easily.

548. I believe in a thousand marriages in the year, there would be less than five divorces?—I have not worked out those figures.

549. (*Chairman.*) I just want to get two matters from you. With regard to the Reformatio, have you seen the copy which has been produced?—No, I have not.

550. We have got it translated, so far as it relates to divorce, from the Latin. I see it is headed, "De Adulteriis et Divortiis." I notice in Article 8, desertion is treated as a ground of divorce?—Yes.

551. One other point I want to ask you about—that the 9th Article purports to suggest that separation *a mensa et thoro* should be abolished?—In my Memorandum I have drawn attention to that.

(*Sir Lewis Dibdin.*) Might I ask a question with reference to that which I forgot, Lord Gorell?

(*Chairman.*) Certainly.

552. (*Sir Lewis Dibdin.*) Would you agree that there is evidence to show that the Reformatio Legum was prepared by Archbishop Cranmer and Peter Martyr, and its preparation was largely brought about under the foreign influence of Peter Martyr?—I should say largely that was the case from reading Burnet's and Collier's history and Strype's account.

553. I am referring to Strype?—Yes, I have no doubt that is so.

554. (*Chairman.*) Do you know how many Bills of Divorce were passed through since the practice of legislative divorce was adopted?—No; the figures are given in the Commissioners' Report, I think, of 1853.

555. I think there were about 200, were there not?—I believe it was some such figure.

556. It seems to have become a sort of regular common form practice at that time?—Of course, as your Lordship remembers, it was the argument of Sir Richard Bethell in bringing forward the Act of 1857 that the procedure before the House of Lords had become in point of fact a procedure before a regular court, and so regular was it that in substance it was no longer legislation but virtually procedure of a court. At all events that was his argument.

557. More judicial than legislative?—Yes.*

558. That procedure still remains with regard to Ireland?—Yes, that is so.

559. Although divorce cannot be obtained in Ireland, it can be obtained through the legislative Act in the same way as it was in England formerly, though the procedure may have less preliminaries?—I am not prepared to admit there are less preliminaries.

560. Well, that does not matter. Now you were asked by Lord Guthrie and Sir Lewis whether you saw any reason for differentiating between Scotland and England?—Yes.

(*Chairman.*) I see Lord Campbell in the House of Lords' debate apparently in answer to the objection that there might be some reason why things should be in Scotland one way, and in England another, said: "Scotland was a small country of peculiar habits and "very religious notions, and what might operate "beneficially there might operate prejudicially here."

561. (*Mrs. Tennant*) I am sorry, Sir John, to trouble you with another question as to the counties, but the Lancashire figures are so remarkable they must be my apology for troubling you. In Table 11 you do give separate orders granted to husbands under the Act of 1902?—Yes.

562. Does your percentage 41·99 include any cases or applications by husbands under the Licensing Act, or are they only applications by wives under the Summary Jurisdiction Act?—They are all the applications in which separations have been made, and I have no doubt they include applications under the Licensing Act also.

563. But there is no distinction made between them?—No, in the figures I have given there is no distinction made.

564. Is it possible to ascertain it?—I think it would be possible. I cannot speak with confidence, but I think it would be possible.

565. (*Chairman.*) Thank you, Sir John. Will you let us have the additional tables you mention, and the corrections to your proof before long?—As soon as possible.

(*Chairman.*) We are all very much obliged to you.

Adjourned until to-morrow morning at 10.30.

The following is the Memorandum referred to and put in by the witness, Sir John Macdonell:—

SOME NOTES ON THE LEGAL HISTORY OF DIVORCE.

In civilised communities in which only monogamy is recognised, there have been six legal systems regulating divorce and separation:

1. Systems under which divorce and separation are left to the parties themselves, without intervention on the part of the State; marriage being a contract, differing indeed from other contracts in creating a status, but a contract all the same, which may be rescinded by the acts of the parties themselves.
2. Systems under which divorce is left to the parties, but subject to certain conditions imposed by the State.
3. Systems under which divorce is permitted only in virtue of the decree of a Court.
4. Systems under which divorce, but not permanent separation, is recognised.
5. Systems under which permanent separation, but not divorce, is recognised.
6. Systems under which both divorce and permanent separation are recognised.

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* *See* Shaw *v.* Gould, 3, E. & I. Appeals, p 91.

The following brief statement may help to show when, where, and under what circumstances these various systems have existed.

THE ROMAN LAW.

I. Of the first system an example is to be found in Roman Law towards the end of the Republic and during the Empire.

The old law, according to which the wife stood in *loco filiae* and the husband alone had a right to divorce, had become obsolete. The wife was no longer under the *manus* of the husband. The obligations under the contract of marriage had become bilateral; either party might rescind the contract; and this power was freely used. No formality or special words were required. It was enough to say "keep the affairs to "thyself." Augustus, it is true, imposed certain conditions as to the manner in which divorce was allowed. In order to be valid, the *Repudium* must be before seven free Roman citizens. Divorce was under this system a private transaction with which the State had no concern.* The relation rested entirely on the free will of the parties; should either desire to be released, he or she could do so. Any agreement to the contrary was void.† No modern law of divorce, so far as I know, has been so lax as the Roman.

DIVORCE IN EARLY CHRISTIAN TIMES.

II. With Christianity came a great change. Relying mainly upon certain passages in the New Testament, chiefly certain texts in Matthew, Mark, Luke, and Corinthians, the Church took a very different view of marriage from that of Roman Law. It did not regard marriage as a mere contract; it viewed second marriage with disfavour; it declared marriage to be a sacrament and to be indissoluble. That position does not appear to have been taken up definitely and distinctly from the first. There was a period of fluctuation and uncertainty; to what extent and for how long they prevailed, is a point much disputed among scholars. Some writers lay stress upon certain passages in the "Pastor" of Hermas, dicta of Justin Martyr or other writers, and the resolutions of certain Councils, to show that at a very early date the doctrine of the indissolubility of marriage was generally accepted. Others, laying stress upon dicta by Tertullian and Origen and Epiphanius, and also upon resolutions of Councils, maintain that for some centuries there was no universally accepted opinion on the subject.

A difficulty arises from the fact that no distinction is clearly made in many of the passages cited, between what is condemned but not void, and what is both forbidden and void; between exhortation and positive command.

A further difficulty exists in the fact that "adultery" is sometimes used in a wide sense, so as to include idolatry and apostacy. (Freisen, 770; Watkins, 222.)

"The ancients," says Bingham, "were not perfectly "agreed upon this question. The writers of the "Church were divided amongst themselves, and the "laws of the State differed from both." (Antiquities of the Christian Church, VIII., 80.)

From Augustine's time the position of the Church, at all events in the West, becomes more defined. The doctrine of the indissolubility of marriage has become, or is rapidly becoming, the prevalent doctrine. Even he, however, admits that the question of divorce and re-marriage is surrounded with difficulties.‡

CONFLICT BETWEEN THE CHURCH DOCTRINE AND SECULAR LAWS AS TO DIVORCE.

III. Both in the East and in the West there was a struggle between the State and the Church; the former adhering to the doctrine of Roman Law and allowing divorce by mutual consent; the latter, in the East less strongly, proclaiming the doctrine of indissolubility; a struggle long carried on with varied results. The Christian Emperors did not at once abolish the Roman law; they merely imposed a sort of fine on delinquents. If the wife were guilty, she lost or forfeited the whole or part of her *dos*. In the event of there being no *dos* she forfeited her property, but not over a certain amount. If the husband were the delinquent, the wife recovered the *donatio propter nuptias*, or, in the absence of such, one-fourth of the husband's property, a proportion which was raised in certain cases to one-third. If there were children, he or she received only the life interest, the property going to the children.

The policy of the Christian Emperors as to divorce by mutual consent greatly fluctuated. I need not give details as to the variety of legislation; they are to be found in well-known books. It is enough to say that divorce by mutual consent was alternately permitted and prohibited by successive Emperors, and that not until about the ninth or tenth century was the struggle as to this point at an end and divorce by mutual consent definitely forbidden, in the Eastern Empire. "Their institutions," says Gibbon, of the policy of the Emperors in this matter, "from Constantine to "Justinian appear to have fluctuated between the "customs of the Empire and the wishes of the Church." Meantime, divorce for certain specified grounds had been legalised.

A law of Theodosius II. and Valentinianus II. imposed restrictions on divorce. "Consensu licita "matrimonia posse contrahi, contracta non nisi misso "repudio solvi praecipimus; solutionem etenim matri-"monii difficiliorem debere esse, favor imperat liber-"orum." Accordingly, divorce was allowed only for certain specified causes. Grounds of divorce (for wife against husband):—Adultery, homicide, poisoning, conspiracy against the Emperor, condemnation for forgery rifling of tombs, stealing from sacred buildings, suborning thieves, kidnapping, consorting with lewd women before her eyes, plotting against her life or beating her. Divorce (husband against wife):—Adultery, poisoning, homicide, kidnapping, rifling of tombs, stealing from sacred buildings, abetting of thieves, feasting with strange men, the husband being ignorant or objecting, spending the night abroad without just and probable cause, or delighting in circus or theatrical sports or gladiatorial shows contrary to his wishes, or plotting his death, or against the imperial power, or being concerned in forgery, or offering violence to him.*

Such substantially has remained the law of the Greek Church: divorce for the above reasons or somewhat similar, recognised; divorce by mutual consent, not.

IV. In the West there was a similar struggle. The Church came into contact and collision with systems which viewed marriage much in the light of a purchase; systems which allowed the husband a right of divorce,

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* Puchta, Institutionen, III., s. ccxci; Zhishman, 96; Esmein II., 89; Bryce's Studies II., 400.

† Libera matrimonia esse antiquitus placuit, ideoque pacta ne liceret divertere non valere constat. Cod. VIII., 38.2. "Die "Römer konnten sich keine Ehe denken wo nicht der wirk "liche Wille die Gatten verbände." Puchta III., s. ccxci.

‡ His ita pro meo modulo pertractatis atque discussis, quæstionen tamen de conjugiis obscurissiman et implicatissimam esse non nescio. (De adulterinis conjugiis, Opera VII., 1747; also Retractations, L. 2, c. 57; and De Fide et Operibus, I., c. 19. As to these passages, *see* Freisen, Geschichte der Canonischen Eherechts, p. 773.) Geffcken (Zur Geschichte des Ehescheidungen vor Gratian, p. 22), contrasting the Canons or resolutions of the Council of Elvira (circa 306) with those of the Council of Arles (314), thinks that there was on the Church legislation before the recognition of Christianity by Constantine "eine Schwanken und teilweise Nachlassen der "früheren Strenge." Gieseler (Compendium of Ecclesiastical History, II., p. 54, translated by Davidson) is of opinion that "In the fourth century, indeed, those who had been legally "divorced were still universally allowed to marry again, "though this was discouraged, as well as second marriages "generally; but in the fifth century the Latin Church began "to forbid the divorced person to marry as long as the other "lived."

See also Selden, "Uxor Hebraica," Opera II., Part. I, p. 827; Hefele, History of the Councils, I., pp. 141–190; Freisen, Geschicte der Canonischen Eherechts, p. 769 *et seq.*; Watkins, Holy Matrimony, p. 198 *et seq.* Summing up the principles of the Council of Elvira, Watkins concludes that "while Christian marriage, or the marriage of two baptised "persons, was regarded as indissoluble, the marriage of a "catechumen, or professing Christian not yet baptised, was "held to be soluble" (p. 467).

* Code I., V. 18, 8, A.D. 449; Zhishman, 102.

or recognised divorce, by mutual consent without any formality, or the intervention of any court.*

Some of the Barbarian Codes adopted in terms of the Roman Law as to divorce, or they blended with little nicety Roman Law and native customs. For example, the Burgundian Laws say:—"Consensu "partis utriusque repudium dari et matrimonium posse "dissolvi." The Bavarian Laws (Pertz XV. 300) say:—"Si quis liber uxorem suam sine aliquo vitio "per invidiam dimiserit, cum 40 et 8 solidis componat "parentibus."

The Burgundian Laws draw a sharp distinction between the rights of the husband and wife.

"(1) Si qua mulier maritum suum, cui legitime est juncta, dimiserit, necetur in luto. (2) Si quis uxorem suam sine causa dimiserit, inferat ei alterum tantum, quantum pro pretio ipsius dederat, et multæ nomine sol. 12."

Some of these Codes, such as the *Lex Visigothorum*, show traces of the influence of the teaching of the Church; the husband has duties to his wife; there is some approach to equality (*Lex Visigothorum* III., 6, 1, 2; Geffcken, 39; Freisen, 775).

In Celtic communities the Church met with much the same antagonism. In Ireland, for example, "there "were seven cases in which the wife could legally "separate from her husband and retain the whole or "part of her *Coibche*, and obtain special damages for "injury."† In Wales, too, the Church's doctrines as to marriage came in conflict with native laws which recognise and facilitate divorce.‡ No doubt there was a constant attempt to harmonise these usages with the teaching of the Church.

Even while adhering to the doctrine of indissolubility, the Church did not always take severe measures against offenders Löning, referring to the mild practice of the Church, powerless to carry out its principles, says:—"Am Ende des 4 Jahrhunderts war es "herrschende Sitte, dass Männer und Frauen, deren "erste Ehe wegen Ehebruche oder wegen eines andern "schweren Verbrechens geschieden war, eine zweite "Ehe eingingen, ohne deshalb der kirchlichen Disciplin "zu verfahren." (II. 609).

Upon the introduction into England of Christianity, there was a similar conflict between the doctrine of the Church and the law of the Anglo-Saxons. According to the latter, divorce seems to have been recognised; apparently it might take place either by mutual consent or on account of the wife's desertion or infidelity.§

Various councils, for example the Council of Hertford 673, proclaimed the indissolubility of marriage. But there is evidence that this theory was not strictly adhered to. "Si cujus uxor fornicata fuerit, licet dimittere "eam et aliam accipere. . . ." "Legitimum "conjugium non licet frangi sine consensu amborum."‖

GROWTH OF THE CANON LAW AS TO ANNULMENTS OF MARRIAGE.

V.—I can refer only briefly to this subject, closely related to divorce. One important part of the Canon Law, when fully developed, was an elaborate theory, with far-reaching consequences, as to grounds of annulment of marriage. The distinction between *impedimenta impedentia* and *impedimenta dirimentia* (Esmein II. 203) was worked out; and the list of the latter became very long and fluctuating. Among them were these:—Incapacity of consent owing to age; difference as to religion (*cullus disparitas*); impotence; the tie of a former marriage; solemn vow of chastity; taking holy orders (*sacer ordo*); defects as to consent (absence of consent, duress, fraud, error, &c.) Relationship before marriage, consanguinity, *cognatio legalis*, adoption, *cognatio spiritualis* derived from participation in the same sacraments (Freisen, 507); *affinitas, i.e.*, the relationship between one spouse and the kindred of the other, which was very widely extended; *raptus* (Esmein I. 203); and certain crimes (Schulte, Handbuch des Katolischen Kirchenrecht I. 307; Freisen, 575).

The forbidden degrees were extended by Pope Alexander II. to the seventh degree (subsequently restricted to the fourth). It should be added that, while according to the Canon law words *de præsenti* as distinguished from *de futuro* sufficed to constitute a marriage, such marriages might be dissolved by papal dispensation (Wilhelm and Scannell, Manual of Catholic Theology, II., 529).

Thus the theory of indissolubility of marriage was accompanied or qualified by an extensive development of the grounds upon which annulment of marriage was permitted. Husbands or wives obtained very often through decrees of nullity what they could not obtain through decrees of divorce.

This variety of grounds of annulment, especially those based on spiritual affinity, was one of the chief complaints of the Reformers. In his "Captivitas Babylonica" Luther derides the fine spun distinctions which the Church had drawn; "Istae nugae compater-"nitatum, commaternitatum, confraternitatum, con-"sororitatum et confiliatatum . . . . Quis enim "istam cognationem spiritualem invenit nisi superstitio "humana"? (p. 87).

The great abuses in regard to the nullification of the marriages on the grounds of pre-contract, forbidden degree of affinity, spiritual relationships and similar causes were the subject of complaints to be found in the English Statute Book. The preamble of 32 Henry VIII. c. 38, for example, says:—"Marriages "have been brought into such an uncertainty thereby "that no marriage could be so surely knit or bounden "but it should lie in either of the parties' power to "prove a pre-contract, a kindred and alliance, or a "carnal knowledge to defeat the same."

Here also may be mentioned as a practical exception to the doctrine of indissolubility the well-known ruling of Innocent III. as to the so-called "Pauline privilege": "If one of two unbelieving consorts be "converted to the Catholic faith, but the other be not "willing to cohabit with him (1) in any case, or (2) "without blasphemy of the Divine name, he who is "thus deserted may pass over to a second marriage, if "he will" (Watkins, 559; Gury, Casus Conscientiae; Solutio, 903).

EFFECT OF THE REFORMATION.

VI.—After the Reformation the subject of divorce takes a new aspect. These notes can refer to only a few of the great changes. In the first place, many of the Reformers were of opinion that marriage was a matter to be regulated by the State. "Quum negotia "et matrimonia sint res civiles, non est nostrum "utpote spiritualium seu ministrorum verbi divini "officium quidquam in ea parte ordinare aut constituere, "sed cuique civitati aut regioni suum relinquere morem "et consuetudinem, prout eam observant." (Luther, quoted in Herzog's Encyclopaedie, Article "Ehe"). In the second place all, or almost all, the Reformers rejected the doctrine that marriage was a sacrament. In the third place, the view of the majority of the Reformers was that marriage was dissoluble, though there was great uncertainty as to the causes for which it might be lawfully dissolved.

I give a few examples of the opinions of the Reformers. Luther admits as grounds for divorce, adultery and desertion. He confesses that he has doubts and perplexities on the subject, and he suspends his final opinion.

* "Das alteste Recht kennt eine absolute Freiheit Ehescheidung durch gegenseitiges Ubereinkommen." Hausler's Institutionen II., 291; Schroder, 316; Löning, 617; Geffcken, 34; Freisen, 775; Wessel's History of Roman Dutch Law, 467.

† O'Curry, "Manners and Customs of the Ancient Irish," I., CLXXV.

‡ "The Ancient Laws of Wales," by H. Lewis, p. 10; the Venodotian Code, Book II.

§ Holdsworth's "History of English Law," II., 78; Pollock and Maitland, II., 390.

‖ Theodore's Penitential (A D. 668-690); Haddan and Stubbs' III., 199; *see also* Johnson's Laws and Canons, I., 209. The above quotation is from one of the Penitentials. No doubt statements in them were sometimes condemned by Councils. It was said of them, "Certi errores et incerti auctores" (Geffcken, 62, 64). But they recorded the practice of the time. In Marculfus's and Lindenbrog's Formulæ are examples of a "libellus repudii" (Selden, Opera II., Part II., p. 841). *See* instances collected in *Du Divorce* par Hennet, pp. 30, 42; as to nature of marriage relation in Charlemagne's time, Lamprecht, II., 52.

"Ego quidem detestor divortium, sed an liceat, ipse "non audeo definire." (Captivitas Babylonica, 887.) Erasmus seems to admit a wide variety of grounds of divorce (Opera VI. 692). Zwingli and Bullinger appear to have thought that all offences equal in gravity to adultery are sufficient cause. Zwingli (Werke VI. 516) puts the question: "What if a more serious ground "than adultery exists?" His answer is, "The laws on "the subject ought to be interpreted fully and freely. "The allowance of divorce for adultery does not exclude "it for graver reasons." A book which had great influence in the middle of the 16th century was Beza's book "De Repudiis et Divortiis," which was often reprinted. It justified divorce in the case of adultery and desertion. His argument was based chiefly on the words of I. Corinthians, 7, 39. Beza strenuously denied that there were other legitimate causes than those above mentioned.*

To those who relied upon the laws of the Emperors, acquiesced in by bishops, as showing the existence of other grounds, his answer was a reference to canons at variance with those laws. Besides, as Beza points out, many of the grounds of divorce mentioned in the Imperial Constitution were capital offences; and why did not the Emperors, he asks, do their duty and terminate the marriages by the execution of the offenders?

The opinions of a few English reformers may be quoted: Henry Smith, "Preparative to Marriage," 1591: "Divorcement, which is the rod of marriage, "and divideth them which were one flesh, as if the "bodie and soul were parted asunder. But because "all performe not wedlocke vowes, therefore he which "appointed marriage hath appointed divorcement, as "it were, taking our priviledge from us when we abuse "it. As God hath ordained remedies for every disease, "so He hath ordained a remedie for the disease of "marriage. The disease of marriage is adultery, and "the medicine thereof is divorcement. . . . Thus, "he which made marriage did not make it inseparable, "for then marriage would be a servitude" (pp. 90, 92). Tyndale, "Exposition and Notes": "If he may not "find in his heart (to forgive his wife) . . . he is "free no doubt to take another, while the law "interpreteth her dead; for her sin ought of no right to "bind him" (Parker Society, p. 51). Hooper's opinion is thus expressed: "Thou seest, that the Lord, Matt. "V., xix., giveth license to divorce for adultery, and "marry again; and Paul for infidelity. The divorce "that the Bishops permit, in their laws, is no divorce, "but only the name of it" (Early Writings, Parker Society, p. 385).

Knox seems to admit only one cause of divorce—"Marriage once lauchfullie contracted may not be "dissolved at manis pleasour, as oure Maister Jesus "Christ doth witness, onles adulterie be committed; "which being sufficientlie proven in presence of the "Civil Magistrate, the innocent (yf thei so requyre) "ought to be pronounced frie, and the offender ought "to suffer the death as God hath commanded."†

THE LAW IN ENGLAND AS TO DIVORCE.

VII. In England for some time after Henry VIII. had broken away from Rome, there was much difference of opinion and perplexity as to the ecclesiastical laws in force, and particularly those relating to marriage and divorce. The statute 25 Henry VIII. c. 19 (1533-4), passed at the instance of the clergy, granted the King authority to nominate 32 persons to examine the canons, constitutions, and ordinances, provincial or synodal, and to retain what portion of them was worthy of being retained. This statute was subsequently re-enacted. In the next reign the statute 3 & 4 Edw. VI. c. 11 (1549-50) empowered the King to appoint 16 persons of the clergy, four to be bishops, and 16 persons of the temporality, four to be learned in the common laws.

In October 22, 1551, a Commission was issued to the Archbishop of Canterbury, the Bishop of London, Richard Cocks, Almoner, Peter Martyr, Rowland Taylor of Hadley, Batholemew Traheron, John Lucas, John Gosnold (Strype's Memorials, II., Part I., p. 530; Part II., 205). In November, 1551, a Commission, superseding that of October, was issued to the Archbishop of Canterbury, Bishop of Ely, Richard Cocks, Almoner, Peter Martyr, William May, Rowland Taylor, John Lucas, and Richard Goodrick (Strype's Memorials, II., p. 206).

The result of the labours of the Commission was a draft code prepared by Cranmer and published under the title of "Reformatio Legum Ecclesiasticarum." It never became law.*

But it is a statement of what was conceived by eminent ecclesiastics and lawyers to be or ought to be law; to quote Dr. Cardwell, "the mature sentiments "of Archbishop Cranmer on the avowed constitution "of the Church of England at that period." I quote, or refer to, a few passages: "De Adulteriis "et Divortiis licebit innocenti novum ad matrimonium "(si volet) progredi. C. 7. No divorce is to be decreed "until an ecclesiastical court has determined the "matter. C. 8. Divorce is permitted for contu-"macious desertion after two or three years. C. 9. "Divorce is permitted for too long absence without "news of the absentee. C. 10. Permits divorce when "'Inimcitiae Capitales' have arisen so that there "is danger of life. C. Permits divorce in certain "circumstances of persistent cruelty. C. 18. Abolishes "separation *a mensa et thoro*: 'mensae societas et "'thori solebat in certis criminibus adimi conjugibus, "'salvo tamen inter illos reliquo matrimonii jure; "'quae constitutio cum a sacris literis aliena sit, "'et maximam perversitatem habeat, et malorum "'sentinam in matrimonium comportaverit, illud "'auctoritate nostra totum aboleri placet.'"†

There seems some evidence that, at all events for more than half a century, from the year 1550 until the year 1602, "Marriage was not held by the Church, "and therefore was not held by the law, to be indis-"soluble" (Divorce Commission, First Report, p. 5). The Divorce Commission in naming 1550 had in view the Marquis of Northampton's case, but as that case was decided in 1548, an earlier date than 1550 may probably be fixed upon. A Commission comprising the Archbishop of Canterbury declared that the Marquis of Northampton's first marriage with Anne Bourchier was dissolved by her adultery. This decision was confirmed in 1552 by 5 & 6 Edw. VI. c. 4, any decretal, canon, ecclesiastical law or usage to the contrary notwithstanding.

Other facts and circumstances seemed to the Divorce Commission to support a similar conclusion, and among them these: the words of the 105th Canon which appear to distinguish between *dissolving* and *annulling* marriage; the terms of the 109th Canon,

* "Nam si (teste Apostolo) desertus non est servituti obnoxious consequitur a lege alterius (ut idem Paulus ibidem loquitur), id est, ab omni eo jure quo persona desertrix eum obstrictum tenebat liberatum esse. Quod si liber est, ergo solutum est vinculum" (p. 282, A.D. 1568). "De Repudiis et Divortiis."

† "Book of Discipline" (1) Works II., 248. Malicious desertion for four years was made a ground of divorce in Scotland by Statute in 1573, after Knox's death.

* Bishop Stubbs points out that three Commissions were issued. A critical account of the preparation of the "Reformatio" is to be found in the preface to Cardwell's edition. He points out (p. vii.) that the compilation made in the reign of Henry VIII. required many alterations, and that additions were subsequently made to it. With reference to the report, Dr. Stubbs says: "It is possible that in some of "Elizabeth's later Parliaments the scheme was revised as a "part of the reform in the ecclesiastical courts, to which the "Queen opposed a negative; the book itself as drawn up "by Cranmer and Peter Martyr, was published in 1571." Appendix to Report of Ecclesiastical Courts Commission, 1883, p. 45.

† *See* as to the Commissions Cardwell's Documentary Evidence I., p. 95, and his preface to the Reformation of the Ecclesiastical Laws; Strype's Memorials of Cranmer (ed. 1812), I., 191; Strype's Life of Sir John Cheke (p. 43); Fuller's Church History, IV., 107. Cheke was a member of the Commission. He wrote a book "An licet nubere post divortium" ("a case much handled in those times"). Strype's Life of Cheke (p. 169). Watkins describes the "Reformatio" as "only a historical curiosity" (p. 426). Dixon (History of the Church of England, III., 367) refers to it as "a figure that has never breathed."

a mensa et thoro to give a bond that the parties will which require in all sentences of divorce and separation not, during each other's life, contract matrimony with another person. "The very fact of enjoining and "prohibiting the bond implies that the marriage "whice the bond was intended to prevent would have "been valid." (Report of Divorce Commission, p. 5.)

It is usually assumed that the law was authoritatively stated in Foljambe's case, and the note of the case in Salkeld Reports (III. 137) is cited in support of this: "A divorce for adultery was anciently *a vinculo* "*matrimonii*; and therefore in the beginning of the "reign of Queen Elizabeth the opinion of the Church "of England was that after a divorce for adultery the "parties might marry again; but in Foljambe's case, "anno 44 Eliz., in the Star Chamber, that opinion "was changed; and Archbishop Bancroft, upon the "advice of Divines, held that adultery was only a "cause of divorce *a mensa et thoro*." Noy's report of the same case (Noy's Reports, p. 100) is: "F. being "divorced for incontinence of the wife, he afterwards "marries P., the daughter of Rye, the first wife "living. By the whole Court that is a void marriage. "For the divorce is not, but *a mensa et thoro*, and "does not dissolve *vinculum matrimonii*. And by "Whitgift, Archbishop of Canterbury, so is the "opinion of divines and civilians." The report in Moore (p. 683) is: "Feb. 12, anno 44 Eliz. In the "Star Chamber it was declared by all the Court that "whereas Foljambe was divorced from his first wife "for incontinence of the woman and afterwards he "married Sarah Page, daughter of Rye, in his former "wife's lifetime, this was a void marriage, the divorce "*e.g.*, *a mensa et thoro* and not *a vinculo matrimonii*. "And John Whitgift, then Archbishop of Canterbury, "said that he had called to himself at Lambeth the "most sage and divines and civilians, and that they "had all agreed thereon."*

In 1603 was passed the Statute of Bigamy (1 Jac. c. 11) which made bigamy felony. The exceptions are notable. Section 2 "Provided also, etc. that this Act, "nor anything herein contained shall extende to any "person or persons whose husband or wife shall be "continuallye remayninge beyond the sea by the space "of seven years together, or whose husband or wife "shall absent hym or herselfe the one from the other "by the space of seven years together," &c.

Section 3 is: "That this Acte nor anythinge "therein contayned shall extende to any person or "persons that are or shall be at the tyme of such "marriage *divorced* by any sentence had or hereafter "to be had in the Ecclesiastical Court, or to any "person or persons where the former marriage has "been or here after shall be by sentence in the "Ecclesiastical Court declared to be voide and of no "effect," &c. It would seem that the first exception did not refer to void marriages, which are dealt with in the second. The words of the first exception are comprehensive.

There is reason to think that in courts of law there prevailed, long after Foljambe's case, doubts as to divorces *a vinculo*; I may refer to Stephen *v.* Totty (1602, Crok. Eliz., 908; Porter's case (1637, Crok. Car. 461); and Williams' case (1641, March's Reports, 101).

It has also been pointed out with reference to this case that the Star Chamber could not have rightly determined such a question; that it is not referred to or cited in contemporory literature or in the discussions of Lord Ross's case; that the decision was apparently unknown to Bishop Burnet; and that the depositions in the case show that the matter in dispute was as to the exclusion of a rightful tenant and a riot or disturbance caused thereby (Professor Craik's Romance of the Peerage, I. p. 412. His statements are founded on an examination of the depositions).

The temporal courts did not follow the ecclesiatical courts in one respect. In the view of the latter, if one of two persons separated by a decree *a mensa et thoro* went through the ceremony of marriage with a third person, and issue were born, such issue would be illegitimate. The secular courts did not logically carry out this theory. If no action for voidance of such union were brought during the joint lives of the parties, no decree could be subsequently pronounced by the ecclesiastical courts; prohibition would go to restrain them from bastardising the issue (Coke on Lit., pp. 233, 235; Harris *v.* Hicks, 1694, 2 Salk, 548).

It is certain that even at a late date divines, members of the Church of England, were not agreed as to this subject. I need only refer to the argument of Bishop Cosin in Lord Ross's case (A.D.1700; 13 St. Tr. 1332; Cosin's works, IV., 189) in favour of divorce *a vinculo*. Not so well known as Bishop Cosin's opinion are the following words of Dr. Hall, Bishop of Norwich:—"I should therefore earnestly advise and "exhort those whom it may concern, carefully and "effectually to apply themselves to the forementioned "remedies; reconciliation, if it be possible to prevent "a divorce; holy endeavours of a continued contin-"ence if it may be obtained, to prevent a second "marriage, after divorce. But, if those prevail not, I "dare not lay a load upon any man's conscience which "God hath not burthened; I dare not ensnare those "whom God will have free" (Works, VII. 474).

Jeremy Taylor (Ductor Dubitantium, XII., p. 180) says: "If the woman finds her husband grow worse by "her tolerance and sufferance, she is to go off from it "by such degrees as are on this side the extreme "remedy, which I reckoned before in the first caution; "and if nothing else hinder, it is not only excusable, "but hugely charitable, and in a very great degree "commendable to be divorced."

In other Protestant countries, divorce was admitted; but there was no generally accepted opinion as to the grounds. In the 17th century some writers, relying chiefly on the words of Matt. V. 32 and XIX. 6, and certain other texts, maintained that adultery was the only ground of divorce. That was the view of Grotius.* But in his own country, the courts took a wider view. In 1650, the Court of Amsterdam decided that if one spouse wilfully and entirely deserted the other, there might be divorce. Further, the courts gave what Von Linden calls "an extensive interpretation" to the two valid grounds, so as to include such grounds as perpetual imprisonment (Institutes III. s. 9).

From the middle of the 17th century there came a change. Dissolution of marriage under the form of annulment had become much more difficult and rare. The number of grounds of nullity were fewer. Papal dispensations had no longer effect. The Common Law Courts had not worked out independently a distinct theory as to the dissolubility of marriage. They had, indeed, been required to consider the matter with reference to dower, which depended upon the existence of a valid marriage. But the early authorities did not discriminate clearly between divorce and judicial separation. In these circumstances, the secular courts took their opinions as to divorce from the Ecclesiastical Courts. The wealthy and powerful, who had, before the Reformation, obtained release through decrees of annulment, sought it at the hands of Parliament; and for some two centuries and a half they got redress by means of special Acts.

DIVORCE IN THE EIGHTEENTH CENTURY.

VII. With the 18th century came a further great change. Before that time the discussion had revolved round two or three texts; divines, scholars and lawyers might read them differently; it was tacitly accepted that their true meaning, could it be found, was decisive and final. The 18th century was the age of the writers on natural law; and in the view of some of them natural law was to be separated from theology. There became evident a disposition to deal freely with the subject from the point of view of the interests of the community and general utility, and suggest other grounds than adultery and desertion. In accordance with the tendency of the time, certain writers argued that divorce was permissible when there was a fundamental breach of the "pact"

* *See* Burn's "Star Chamber," p. 75, where there is a reference to the case; *also* Burnet's History II, 1131

* Grotius appears to have vacillated in his view as to the grounds of divorce. Introduction to Dutch Jurisprudence, Book 1., c. 5

between the parties. For example, Mosheim (1737) contended that plotting against the life of one of them justified divorce. "Quis vero dubitare posset eum qui "pasciscentis vitæ insidiatur pactum non violasse?" So, too, the committing of an offence punished by exile; that was a breach of the essence of the "matrimonial pact."

I name one of those writers who affected legislation; Samuel Cocceji, the minister of Frederick the Great, his adviser in law reforms, and the author of the "Project des Corporis Fredericiani."* Cocceji's ideas were embodied in the Code of Frederick the Great. I quote the chief material passages (Part I. Book II. Tit. III., Article 35).

II. "When married people shall demand, with common consent, the dissolution of the marriage, our will is that the procedure in the affair be only gradual. First, endeavours shall be made to reconcile the parties, and all the motives that ought to determine them to this shall be proper; observing if it be necessary, to call a clergyman to give them a suitable exhortation. If these steps be ineffectual, they shall be separated from bed and board for one year. If at the year's end there remains no more hope of reconciling the parties, and they persist in their petition, the marriage may be dissolved."

III. The marriage may be dissolved at the request of one of the parties, having lawful causes to petition for the dissolution; such as the reasons following:—

IV. When one of the married persons shall have committed adultery, and been convicted of it, which shall have been observed, even though we had granted such persons letters of pardon. From this rule must be excepted the cases following:—

(*a*) If the spouse complaining had also committed adultery, and in this case we reserve to the Fiscal the right of prosecuting both for the public benefit.

(*b*) When the offended party has pardoned the other's fault, which may be presumed, if such party had performed the conjugal duty to the other.

(*c*) If one of the spouses had occasioned the other to commit adultery, and if such party had refused the conjugal duty or if, for example, the husband had acted as a pimp to his own wife, &c.

(*d*) If the woman commits adultery, really believing that she has to do with her own husband.

(*e*) If the wife marries again after having received credible accounts of her husband's death, and after having produced them before a judge, and the first husband appears again.

V. "If a wife have a suspicious correspondence against the inclination and prohibition of her husband with a man, as if she wrote him love letters, &c., for although the crime of adultery cannot thereby be proved yet these letters and presumptions are sufficient to dissolve the marriage.

VI. "Marriage is likewise dissolved when one of the married persons maliciously deserts the other.

VII. "Marriage may likewise be dissolved when one of the spouses conceives an irreconcilable enmity against the other, and when one of the parties gives occasion for enmity by abusing the other in a violent manner, by contracting the venereal disease, by attempting the life of the other, by committing crimes for which such spouse may be condemned to the wheelbarrow, to whipping, to death, to banishment, or be branded with infamy.

VIII. "If one of the parties becomes insane, and shall continue in that state for seven years, and for that reason the other petition for a dissolution of the marriage, especially if it were a woman who, on account of her commerce, or the state of her affairs, might be in indispensable need of a husband's assistance; but in this case the judge shall take care that provision be made above all things for the maintenance of the insane person."*

These sections were put in force in some of the Prussian provinces. In 1752 was issued an edict directing the courts not to raise difficulties in the case of married people seeking divorce, if there existed *inimicitiæ capitales et notoriæ*.

The Prussian Code which came into force in 1784, imposed some additional restrictions upon divorce. But "invincible mutual aversion" was retained as a ground of divorce in cases in which there were no children of the marriage, and in which both spouses desired to be released from the marriage tie. On the petition of one of the spouses a divorce, on the ground of mutual aversion, was not to be granted except in the case of it being clear from the evidence that the aversion was violent and so deeply rooted that all hope of a reconciliation had disappeared.†

Before the Civil Code, which came into operation in 1900, four legal systems regulating divorce existed in Germany: the Prussian Landrecht; the Civil Code; the Common Law; and the Saxon law (containing provisions similar to those of the *Landrecht*).

The next law of importance in the legal history of divorce is that passed in France in 1792.

The National Assembly (September 20, 1792) legalised divorce and did away with *separation de corps*. The grounds for divorce were: mutual consent, incompatibility of temper or character, insanity, sentence to corporal or degrading punishment, crime, cruelty or dishonourable treatment, notorious licentiousness, abandonment for at least two years, five years absence without news of whereabouts, emigration under certain circumstances. Divorce was still further facilitated by the laws of December 1793 and April 1794.‡ This legislation, which was followed by a very large number of divorces, was modified in September 1797.

LAWS AS TO DIVORCE IN THE NINETEENTH CENTURY.

IX. In France the law as to divorce was greatly altered by the Code Napoleon, which made the following the only grounds of divorce: adultery of wife or of husband if he kept his mistress in the house in which husband and wife resided, violence endangering the life, cruelty, or serious indignities, sentence to a degrading punishment, mutual consent persevered in.

Next in divorce legislation, in order of date and of importance, comes the Matrimonial Causes Act of 1857 for England and Wales (20 & 21 Vict. c. 85. s. 27). Section 27 states the grounds for divorce: "It shall "be lawful for any husband to present a petition to "the said court praying that his marriage may be "dissolved on the ground that his wife has since the "celebration thereof been guilty of adultery; and it "shall be lawful for any wife to present a petition to "the said court praying that her marriage may be "dissolved on the ground that since the celebration "thereof her husband has been guilty of incestuous "adultery, or of bigamy with adultery, or of rape, or "of sodomy, or of bestiality, or of adultery coupled "with such cruelty as without adultery would have "entitled her to a *divorce a mensa et thoro*, or of "adultery coupled with desertion, without reasonable "excuse, for two years or upwards," &c.

The grounds for judicial separation were stated (section 16) to be for either husband or wife: "adultery "or cruelty, or desertion without cause, for two years "and upwards."

In 1884 was passed the French law of divorce, which stated that the grounds for absolute divorce were

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* Cocceji's opinions are stated in "Dissertatio prœmialis" (Lib.) 3 c. 4. c. CLXXX. "Dissolvuntur nuptiæ jure naturali "i. (1) mutuo consensu; (2) morte alterius; (3) per "divortium modo justa causa sit."

Justa causa est (a) adulterium; (b) malitiosa desertio; (c) quaelibet turpis causa, ut inimicitia capitalis, vel, si absque periculo vitae vivere uxor cum tali marito nequit, uti si lepra, morbo gallico, conjux infectus est; (d) si vi, metu injusto, nuptiæ sint contractae.

* Translation published in Edinburgh, 1761; obviously defective in some parts.

† Dr. Schuster in Journal of Comparative Legislation, 1910; Savigny, Vermischte Schriften, V. 222. As to Austrian divorce law, see paper by Professor Tilsch of Prague, Journal of Comparative Legislation, 1911.

‡ *See* Sagnac, La Legislation Civile de la Revolution Française, p. 292, as to the effect ("excés funeste") of this legislation.

adultery, violence endangering life, cruelty, or grave indignities, a sentence upon one of the parties to a corporal and degrading punishment.

The grounds for a judicial separation are the same as those for an absolute divorce, and a decree of judicial separation of three years' duration can be converted into one of divorce upon the *application* of either party.

In 1900 came into operation the Civil Code for Germany, Articles 1565–1568, stating the grounds of divorce. They are adultery (Article 1565); attempts on the life (1566); malicious desertion (böslich verlassen) for at least one year (1567); (Faculative grounds): "If the respondent has, by means of a serious breach " of his or her marital duties, or by dishonourable or " immoral conduct, caused the relations between to be " so injuriously affected that the respondent could not " be reasonably expected to continue the marriage " (1569); insanity of at least three years' duration " after the marriage, and so serious as to destroy " community of intellectual interests, and there is no " prospect of recovery (1569);" (Separation) same grounds as divorce. The separation may at any time be changed on petition of either party into an absolute divorce provided marital life has not been renewed.

In the first form of the Civil Code it was proposed to give no right to an immediate divorce, but only a right to a temporary separation, which might be converted into a decree of divorce. The second Commission to which the Bill was referred was opposed to ordering temporary separation. Ultimately it was enacted that a petitioner might obtain a decree of a temporary separation or divorce as he or she might think fit.

JUDICIAL SEPARATION.

X. While refusing to recognise divorce proper, the Church permitted separation *a mensa et thoro* by the decree of an ecclesiastical court. The causes for which English ecclesiastical courts admitted separation (*a mensa et thoro*) were: adultery, cruelty, unnatural offences (Shelford, 364.)

Desertion was not, according to Canon Law, regarded as a ground for separation. Most of the Reformers were strongly opposed to judicial separation as unscriptural and inconsistent with the marriage tie. The argument against it is put by Erasmus in his Commentaries on the Corinthians, from which I quote a few words: "Quid est hoc aliud quam afflicto " afflictionem addere, cui subventum oportuit?" (Opera VI. 695). Luther designates a marriage as to which there was a decree of separation as a mere shadow of a marriage.

A brief reference to the law in regard to agreements of separation between husband and wife, and to some recent enactments, may be here made. That the parties had by deed or otherwise agreed to a separation was, in the view of ecclesiastical courts, no answer to a suit for restitution of conjugal rights, even if the deed contained a covenant not to sue (*Kennedy* v. *Kennedy*, 1907, P. 49; *Durant* v. *Durant*, 1 Hagg. Ecc. p. 760; *Westmeath* v. *Westmeath*, 2 Hagg. Ecc. Supp. p. 115.) If the husband returned to cohabitation there was an end of the deed and of the covenants therein.

For a long time the Common Law and Equity Courts in this country were opposed to such agreements as being inconsistent with the notion of marriage and contrary to public policy. Lord Eldon repeatedly expressed his repugnance to them.

In recent times, certainly since the decision of the Honse of Lords in *Wilson* v. *Wilson* (1848), 1 H.L.C., 538, the tendency has been to recognise them.

By recent legislation an enormous development has taken place in orders by magistrates equivalent to decrees for judicial separation (*see* Table). The statutes under which such orders are made are the following:—

By section 4 of the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), it is provided that—if a husband is convicted of an aggravated assault within the meaning of section 43 of 24 & 25 Vict. c. 100, the court or magistrate "if satisfied that the future safety of the " wife is in peril" may "order that the wife shall be " no longer bound to cohabit with her husband, and " such order shall have the force and effect in all " respects of a decree of judicial separation on the " ground of cruelty."*

Here reference may be made to the Matrimonial Causes Act, 1884, section 5 (47 & 48 Vict. c. 68), which provides that "if the respondent shall fail to comply " with a decree of the court for restitution of conjugal " rights, such respondent shall thereupon be deemed " to have been guilty of desertion," without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced, although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights; and when any husband who has been guilty of desertion by failure on his part to comply with a decree for restitution of conjugal rights, has also been guilty of adultery, the wife may forthwith present a petition for dissolution of her marriage, and the court may pronounce a decree nisi for the dissolution of the marriage on the ground of adultery coupled with desertion. Such decree nisi shall not be made absolute until the expiration of six calendar months from the pronouncing thereof, unless the court shall fix a shorter time.

The Summary Jurisdiction (Married Women's) Act, 1895 (58 & 59 Vict. c. 39), s. 4, states that "any " married woman whose husband shall have been con- " victed summarily of an aggravated assault upon her " within the meaning of section 43 of the Offences " against the Person Act, 1861," or whose husband shall be convicted upon indictment of an assault upon her, and sentenced to pay a fine of more than five pounds, or to a term of imprisonment not exceeding two months, or whose husband shall have deserted her, or whose husband shall be guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children, whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to "leave and live separately " and apart from him" may apply to a court of summary jurisdiction.

Such court of summary jurisdiction may make an order, containing among other provisions "a provision " that the applicant is no longer bound to cohabit " with her husband (which provision while in force " shall have the effect in all respects of a decree of " judicial separation for cruelty)."

Section 5 of the Licensing Act of 1902 (2 Edw. I. c. 28) declares that—

(1) Where the husband of a married woman is an habitual drunkard as defined by section 3 of the Habitual Drunkards' Act, 1879, the married woman shall be entitled to apply for an order under the Summary Jurisdiction (Married Women) Act, 1895, and that Act shall apply accordingly.

(2) Where the wife of a married man is an habitual drunkard as defined by section 3 of the Habitual Drunkards' Act, 1879, the married man shall be entitled to apply to a Court of Summary Jurisdiction for an order under this subsection, and on any such application the court may make "an order containing " *inter alia*" a provision that the applicant be no longer bound to cohabit with his wife (which provision, while in force, shall have the effect in all respects of a decree of judicial separation on the ground of cruelty).

These notes have not touched the subject of international law affecting divorce, and the recognition of divorces decreed by foreign courts. It may be mentioned that a convention to which several European nations were parties respecting this subject, was agreed to on June 12th 1902 (Revue de Droit International, 1902, p. 492).

* Section 21 of the Matrimonial Causes Act, 1857, gave a wife deserted by her husband a right to a protection order as to her earnings.

Winchester House, St. James's Square, London, S.W.

SECOND DAY.

Saturday, 26th February 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Hon. Sir JOHN BIGHAM called and examined.

566. (*Chairman*). Sir John Bigham, you are President of the Probate, Divorce, and Admiralty Division?—I am.

567. You have occupied that office since this time last year?—Yes.

568. You have been good enough to give us a proof of your views on some of the points that have to be considered by the Commission, and I will take them in the order in which I find them in your proof. First, as to the question of local courts. The suggestion has been made that it might be desirable that cases should be taken in certain circumstances in county courts. Perhaps you would state your view to the Commission on that point?—Well, I have stated my views in the short memorandum I have made, and I want to say this before I begin. My experience of the administration of the divorce law is short. I mean to say, I have only been in my office 12 months, and during that time of office I have sat in the Divorce Division of the court for no longer than six months, that is to say, a little more than two sittings. So that the conclusions I have come to are not based on any very long practical experience. But I think that, while admitting that equality is extremely desirable, and should be as far as possible obtained, between the rich and the poor, I would point out that absolute equality is quite impossible. A rich person always has the advantage in a court of law in some respects over a poor person. His purse enables him to obtain the very best counsel, and his purse enables him to obtain the very best evidence, and, unless you are going to put the public purse at the service of the poor, you cannot possibly put the poor in that respect on an equality with the rich. At the same time, I think that some attempts might be made to do it, and I have suggested how local courts might, in my opinion, be used in this connection. Where a poor person is unable to bring to the court in London, which I think is the right court for the determination of suits for divorce or for judicial separation, the evidence necessary to support his or her case, I think provision might be made by which the evidence might be given before either a judge of a county court or a stipendiary magistrate, or even a registrar of a county court, and that the evidence might be taken in the form of depositions and sent to London to be used at the hearing of the cause, with any observations that the person taking the evidence may think it right to make upon the demeanour of the witnesses. The method is not as good, in my opinion, or nearly as good, as having the witnesses before the court, but at the same time I think it might assist the very poor in getting their cases tried at less cost to them. I also think that the poor people might be permitted to prove a number of formal facts by affidavit. I further think that provision might be made at the expense of the public for bringing to London witnesses whom it is absolutely necessary to have in the court. If you are trying a criminal case, and the prisoner communicates to the prosecution that there is a particular witness who is necessary for his defence, the prosecution brings that witness, at the expense of the rates, to the court, and I see no reason why a person who is struggling for a particular kind of relief—whether it be divorce or judicial separation—should not be assisted in the same way. In that way, I think, you could give to litigants who are poor the means of bringing their cases easily and without expense before the High Court; and that is one of the reasons why I think it is not necessary to have recourse to the county courts at all. I think you could secure all the advantages that are required without taking from the High Court part of its jurisdiction which, in my opinion, it is most desirable that it should keep. I say it is desirable that the High Court should keep its jurisdiction, because, I think, the question of status is a very important question. It is important from the point of view of the husband, of the wife, of the children, and of the State; and it is a question, therefore, which ought, in my opinion, to be dealt with only by the highest tribunal. And I have pointed out, in the observations I have made, the importance, in my opinion, of having, as far as possible, one standard upon which the cases are judged. If you have, as you would have if this jurisdiction were entrusted to the county courts, tribunals spread over England, you would have an infinity of different measures by which the relief was administered. There is nothing about which the opinions of men vary in this connection more than the question of cruelty. Some men think that the least violence amounts to sufficient cruelty to justify, in conjunction with adultery, a divorce. Other men think differently, and I think the cruelty ought to be something like the cruelty which it was necessary to prove in the old days; by the old days I mean the time of the Ecclesiastical Courts. I know the difficulty there is about that matter, because I know how difficult it is for juries to deal with it. You tell a jury in general terms what kind of cruelty they must find against the husband before they can say he has been cruel within the meaning of the law. But the juries disregard what you say, and if they think there ought to be a divorce for other reasons they find cruelty without the least difficulty. I think it is very desirable there should be, as far as possible, one standard. There cannot be one standard as the law is administered at present, because there are two judges. I do not know; Judge Tindal Atkinson will tell me how many county-court judges there are.

(*Judge Tindal Atkinson.*) Fifty-five.

(*Witness.*) Well, if you have 55 you will have 55 standards. Then another reason why I do not like the notion of the jurisdiction being exercised by county courts is that I believe the opportunity of collusion would increase enormously and would be extremely difficult of detection. Yesterday Sir John Macdonell, some of whose evidence I heard, was asked about the position of the King's Proctor in cases where suits for divorce would be tried in county courts, and I think he suggested (I do not know that he had prepared himself to answer the question) that the King's Proctor should have in different districts over the country some sort of an officer who would obtain particulars and transmit them to the King's Proctor in London. I suppose that means that the King's Proctor should try his intervention in London. Well, that would be a great hardship upon the poor person, and I have known cases of very serious hardship upon poor people where the King's Proctor has intervened, and intervened unsuccessfully. There was a case that I had not long ago, the case of a poor man who had obtained a divorce against his wife, and the King's Proctor intervened unsuccessfully, and I, taking a mistaken view of the practice of the court, declined to order the King's Proctor to pay the costs. I was told by the Court of Appeal that that was wrong, and that as the King's Proctor had failed he ought to have been ordered to pay the costs; and I was not at all sorry, because I thought it was a terrible hardship upon the poor man, who was a pilot, I think. He could not afford to pay the costs of a four days' trial, and I was not sorry that he got the money. But, as you know, there is always a considerable difference between the costs that are taxed which the successful party recovers, and the costs which he has in fact to pay; so that if the King's Proctor's intervention had to be tried in London in cases where the original suit had been tried in a county court, I think that would be an additional difficulty in the way of the poor people. I do not know that I have anything more to say about the local courts.

569. (*Chairman.*) I should like just to ask you one or two questions which are not on the proof, but which were suggested by some of the evidence yesterday, to supplement the point which you made about taking the evidence in poor cases, either locally and sending it to London or taking that evidence by affidavit. One of the difficulties that Mr. Registrar Musgrave pointed out yesterday was that the poor people, in fact that everybody who starts their suits, must file their petition and citation in London, either themselves or by a solicitor, and that the respondent or co-respondent must appear in London, either personally or by means of a solicitor. I should like to ask you if you have any suggestion to make as to how the poor people would get over that difficulty if they are not able either to come themselves or to employ a solicitor, but could proceed personally through a county court?—I see no difficulty at all about that. It is a mere matter of procedure, and I do not see why they could not proceed either in the county court or in the High Court in the district registries.

570. That is to say, conduct the proceedings in the county court?—Certainly.

571. And that the hearing be in London, either by *vivâ voce* or, in the case you put, by the sending of the evidence?—Yes. You, Lord Gorrell, I think—I am not sure—are old enough to remember the days when all writs were issued in London; and all the proceedings in all actions had to be carried on in London until we got district registries all over the country, and those district registries were a very great convenience to litigants; and I do not see why they should not be used.

572. Do you suggest it should be done by the county-court registrars or the district registrars of the Probate Court?—That is a matter I have formed no opinion about, and, to tell the truth, I do not think it is important. The importance is that it should be done in the locality where the particular person resides. What officer he goes to, whether it is the officer of the county court or of the district registry, or an officer of the High Court, appears to me quite indifferent.

573. Then, one other matter which I do not think has been mentioned yet: that to obtain uniformity of decision and yet give local trials, the judge might be itinerant?—Do you mean an itinerant county-court judge?

574. No, I mean taking your suggestion of the High Court?—Do you mean sending one of the two judges of the Probate Division on circuit?

575. Or an additional judge?—Do you mean, then, adding another judge to the court?

576. Might I suggest what is in my mind? Of course, there are a great mass of proofs which you have not had the opportunity of seeing, and I have not studied them with any care yet; but I find suggestions made here and there that if it is desirable to obtain uniformity it might be by a judge who went round and took all the cases on that subject which, if placed upon the county-court judges, might add too much to their labours. That is the sort of point?—Yes. Well, I know a good deal about the circuit system, and I think you would find that extremely cumbrous and expensive. I do not know where the judge would be lodged; what would be done for him on circuit; and I am sure as far as cheapness goes—if cheapness is to be considered at all—it would be far less expensive to bring the witnesses—such as are necessary to produce before the court—to London. Far better do that than send the judge down. I do not think the system of a judge travelling about the country to try these cases would work at all well.

577. Just one other point about uniformity. Are you able to say at all what proportion of the cases at present are undefended?—Well, I think a sittings starts with, say, 180 to 200 undefended cases, and, as you know, they are all disposed of during the sittings. In addition to those ——

578. That would be 600 or 700 in the year?—Certainly there would. I am not sure there would not be more, because during the sittings, as you know very well, there is very often a supplemental list, so that during the sittings you dispose not only of the list which is ready when you commence your sittings—a list of probably 180 to 200 causes—but you also dispose of a number of cases which have been set down during the sittings. So that perhaps during the sittings you may dispose of 250 undefended causes.

579. It is suggested to me (I have not got the figures before me) that the last returns show 670?—Well, that would be about the number, because there are four sittings, and if there are 250—no, that would make it a good deal more. I should have thought there were more than 600.

580. Well, we can check that; but the number beyond that which are defended ——?—Well, then, the number of defended; there is, perhaps, a little difficulty about that. At the beginning of these sittings there was a list of defended causes to be taken before the judge alone of about 80. Well, of course, a certain proportion of those were probate causes, but I should think that of the whole number 60, at all events, were divorce causes. In addition to those, there are the special juries and the common juries, and I should think they would add, at all events, another 25 to the defended list; so that you would get 80 defended causes to be disposed of during the sittings. I am not quite sure that my figures are accurate, but they are about right.

581. I have just sent for the statistics, if you would wait for one moment.

582. (*Sir George White.*) Might I ask—referring back again to the judge on circuit—would not it occasion even greater delay, probably, in disposing of the causes than the present method?—Well, I am satisfied it would.

583. (*Mr. Rufus Isaacs.*) There is no delay in undefended cases now, is there?—I am at present disposing of—and my colleague, Mr. Bargrave Deane—undefended cases which have been commenced as lately as the beginning of this year.

584. (*Chairman.*) Yes, in my time we introduced the principle of putting all the undefended cases that were to be taken the first few days of the sittings, so that they are all then disposed of?—Yes; well, we have not only long since disposed of the list with which we began, but we are disposing of the supplemental cases

which have been set down during these sittings, so it very often happens we dispose of a case which has only been in existence a month.

585. Now I have the statistics; we will take 1907. The total number of undefended suits in that year was 576, and the total of defended suits 153. That is the last year of which we have the published statistics. It is more than two-thirds, nearly three-quarters of undefended?—Yes.

586. Those are mostly of the poorer class of life?—Oh, yes, they are; but if you mean by that to say that it is the poorer class who resort to the court more than the rich, I do not think it is true.

587. But I mean they are not what you call the high-class cases?—Oh, no; they are squalid and repulsive.

588. They must be cases in which they can find the money, somehow, to get there?—Yes.

589. Those cases are disposed of at the rate of how many a day?—Well, 20; I have disposed of 25, but I have found by my own experience it is not wise to do that; I mean to say, if you take 20, it is probably as many as you can get through.

590. That is an average of about one every quarter of an hour?—Yes.

591. On your point about keeping those undefended cases, for instance, to the High Court; disposed of at that rapidity and with that character, do not you think the county-court judges could do that equally well, and with reasonable prospects of uniformity?—Well, I think this. I do not mean at all to reflect upon the capacity of the county-court judges, because I know them to be excellent men who would do the work admirably; but I think this: it is in the undefended cases that you must be on the look-out for collusion. Collusion does not happen, in my opinion, nearly so often in the defended cases, where the whole thing is threshed out by counsel against each other, as it is in undefended, where the court cannot easily get from the witnesses the facts. The court only hears one side; the other side is not there; and I think you would be better able to check collusion if the thing were kept in the High Court than if you had it done in the districts spread over the country in these smaller tribunals. Of course, I am assuming you would say that collusion is objectionable. Some people think that two married people ought to be able to say to each other, as they did on the day they were married, "We marry each other"—that they ought to be able to say on any day, "We unmarry each other." If that is the state of things, collusion is of no importance.

592. Do you know at all what proportion of the cases of intervention are cases of collusion, or are cases in which the petitioner has kept back facts?—I cannot tell you; I do not know. All I know is that the cases I have tried, which are not many (King's Proctor's cases, I mean), have been cases where misconduct has been attributed to the successful petitioner, and therefore not cases of collusion. I do not think I have tried a case of collusion.

593. That is what I want to get at. Intervention does not take place, except rarely on the ground of collusion, but on the ground that the petitioner had been guilty of misconduct?—Yes; all I can say is, that I have not yet had to try a case of collusion. I have seen them reported in the paper, and I think my brother, Bargrave Deane, has comparatively recently tried one or more, but I have not had to.

594. The reason I ask that is because you say in the last paragraph of your note, which we will come to in a moment—and there are suggestions in some of the proofs, and in some of the foreign laws we have had put in (especially the French), that the misconduct of the petitioner should not be a bar. I daresay you have seen those suggestions?—Well, I have heard of them; I do not know that I have seen them.

595. If that were so do you think it would tend to remove the present desire of petitioners to keep back facts?—That would not be, from my point of view, collusion.

596. No, I know?—I thought you were on the question of collusion.

597. I have passed from that because I think, as far as we have got, at any rate, that collusion is not so frequently the cause of intervention as the misconduct of the petitioner?—Well, I have a strong opinion—which I daresay may shock some people—that misconduct ought not to deprive (except in serious cases) either the husband or the wife from getting relief.

598. That is in accordance with the French law?—I do not know whether it is in accordance with the French law, but it is in accordance with the view I take of the best thing to be done for the parties. I will give you an instance I had the other day. There was a man who brought a suit against his wife for divorce on the ground of her adultery. There was no mistake about adultery at all; it was admitted in fact. It had to be proved formally, but still it was not denied. The petitioner himself was fixed with adultery, so that I had two adulterers as litigants. The petitioner, of course, could get no relief. The wife, who was the respondent, asked for a judicial separation, and I was very anxious to give it to her, and then I was told that I could not because, to begin with, she was asking not for a divorce but for a judicial separation, but because also she had herself been guilty of adultery. I was quite satisfied that she had been driven to misbehave herself, if you can call it misbehaving, by the conduct of the husband, who was committing adultery day by day with a servant in the house, and the wife, in despair, and disgusted I suppose, went away with somebody; but I could not give her relief, and I should have been very glad to give her relief. I adjourned the case to be further considered, and I am glad to say that I shall not have to consider it, as the parties have come together again, so that there is an end of that.

599. Then you think in those cases there will be no advantage to leave the tie of marriage. I gather that your view is that neither in the interest of the parties or the State is it desirable that the marriage tie should remain in those cases?—No; but you must understand that the misconduct must be either of excusable or of a slight character. I should not give relief to a man who habitually lived in open adultery at all. Then, looking at it from the man's point of view, I do not think that if in the course of, say, 20 years' married life he has once made a slip and misbehaved himself, that that ought to take away from him the right to separate himself from a dissolute and abandoned woman. It does at present, or, at all events, it is a very great stumbling block, though the court has a discretion.

600. A discretion very rarely exercised?—Yes.

601. But the point I had in my mind was on the King's Proctor's position. If the parties were put in a position in which they might safely disclose everything the present matter of concealment would be largely obliterated?—I think it would. No doubt they suppress facts because they fear the consequences of disclosing them.

602. Is that a satisfactory state of things for tribunals to sit upon?—I do not think it is.

603. It would be better, if possible, to produce a state of things in which the parties should be interested in fully disclosing the whole facts?—Yes, so that the court may have the whole case before it; far better.

604. One other question about the King's Proctor and intervention in London. Supposing the theory were carried out of any local tribunal taking a case, and an intervention took place in London, would there be any difficulty in trying the intervention in the country. You rather assumed that the necessity of the intervention in London led to the necessity of the trial of the intervention in London. Would that follow? Supposing the King's Proctor said: "I am entitled to enter "my appearence in the London office, but then the case "can go down and be tried in the country"?—That raises, in my mind, a question I have not considered, but it is this: the court might have given to it a jurisdiction to remit a divorce case, as they can, as you know, remit probate cases, to be tried either at the assizes or a county court—in some local tribunal, and then, in proper cases, these tribunals could be used, and might be used (I have not thought about it) very usefully.

605. At any rate that might mitigate the difficulty of an intervention in London, if the consequences of that intervention were worked out in the country?—Undoubtedly.

606. Now, the next point you have set down is as to separation orders?—Yes. Well, I cannot tell you very much about the working of that Act of Parliament, for I know very little about it; but during the Christmas vacation I took the trouble to see some of the stipendiary magistrates in London, and my own impression is that the Act is admirably worked in London, with a desire to keep husband and wife together as far as possible; and I am sure that ought to be the aim of the magistrate in dealing with these cases.

607. We shall have the advantage of seeing several London magistrates?—Yes.

608. So, perhaps, you might pass on to what your view would be of it if any change should take place—the direction it should take?—Well, what I meant by that observation is this, that I think that the poor people are visited by a great misfortune when their home is broken up. These proceedings are instituted, as a rule, I think, by angry women, who no doubt have some cause for their anger—but they are instituted by angry women, and the orders are obtained hastily, with disastrous consequences which the women themselves did not foresee; the husband leaves the home; the children, who are probably young, are left without any father, and, as a rule, I am glad to say, the father is fond of the children and the children are fond of the father. That state of things, I think, conduces to immorality. The father goes away and he finds some other woman, and the mother not improbably finds another man; and, therefore, I think, the magistrates ought to hesitate a long time before they separate the man and the wife, both in the interests of the man and in the interests of the wife and in the interests of the children.

609. You say in your note that you think if any change is made it ought to be in the direction of separation orders being more difficult rather than more easy to obtain?—Yes.

610. Well, do you think it wise to leave the power in the magistrates to make these orders permanent in the first instance?—Well, I heard what Sir John Macdonell said yesterday on that subject, and there is, of course, no reason why, if an order for permanent separation is made, the parties should not come together again if they choose. They can always come together again, therefore there is no objection on that sense with the order being made permanent. But I think what Sir John Macdonell was pointing to was this, the continuance of what is called the permanent orders continuing for two or three years, the parties living separated in such circumstances that they cannot get married—neither of them can get married. I think Sir John Macdonell was right when he says that it is well worth while considering whether, if a permanent order continues to exist, that is to say, the parties do not resume cohabitation for a long time—whether there should not be a divorce (especially if the people are young) so that the young people can do their duty to the State by getting married. I think that is well worth consideration. I have not thought about it myself, but on the blush of it it seems to me to be a reasonable thing.

611. There is one point connected with this I should like to ask your view about. I daresay you recall the first Act that gave the magistrates power?—Do you mean the 1895 Act?

612. No, the 1878 Act. Originally in desertion cases the magistrates had only power to order the payment of a certain sum, and not power to make any order for separation. The original other Act was an Act for protection, namely, in the case of cruelty. They then had in that Act power not only to order payment of money, but to order a permanent separation. In 1895 the Act applied those two remedies to both classes of cases. Now do you see any necessity for permitting an order for permanent separation to be made where the mere object is to obtain maintenance, and not protection?—Well, I do not at present. It is not a matter I have thought about, but I do not see any necessity for it.

613. The next head to which you refer is the publication of reports. We should be glad to have your views?—Well, as I say, I never see the papers which offend in this connection. My newspapers are what I call the respectable newspapers. But there are newspapers, especially Sunday newspapers, which do offend, at least, so I am told, and I was told by the proprietor of one very well known Sunday newspaper that if his newspaper does not publish what he calls the spicy details he has complaints from his agents all over the country that the rival newspapers have got it all in, and that consequently they cannot sell his newspaper. I am not going to name the newspaper; it is not necessary to do that; but I have no doubt that it is true that these indecent and improper details are put into the newspapers in order to sell the newspapers. They are put in for the most sordid motives, not because it is necessary in reporting a case that they should be there at all, and those are the details I would have suppressed.

614. I do not know whether you were present yesterday when we had letters put in from various countries the laws of which either exclude all publication or give the court power to hear cases privately?—I think I did hear that matter referred to. I have a very strong opinion that it would be undesirable to suppress the reports, and I say so because of the anxiety that I know exists amongst the litigants themselves to keep the cases out of the paper. That very anxiety convinces me that the fear of publicity helps to keep people straight, and I would not take the fear of publicity away from them.

615. Do you think that would be in the interests of the children of the marriage?—I think so. It is in the interests of the public generally. Of course, it is always a shocking and painful thing that these cases should come into court at all when there are children.

616. I am now asking about something which is in proofs which have not yet been circulated, I think. Have you any suggestion as to, or experience of, the improper use of the fact that there is publicity?—No, I have never heard of it.

617. Now, the fourth head of your memorandum is with regard to any suggestion of change in the grounds of divorce. Perhaps you will give us your views about that?—Well, the principal proposition, as I understand, is that there should be what is called equality; that is to say, that the husband's adultery should be a sufficient cause in itself to entitle the wife to a divorce, as it is in the case of the husband with the wife's adultery. I do not agree with that. And here, again, I am speaking upon a subject that I do not care much to speak about in public, but I have to speak about it in this connection. I do not think that an act of adultery on the part of a man has anything like the same significance that an act of adultery on the part of a woman has; and most men, I think, or all men, know it perfectly well. An act of adultery on the part of a man may be more or less accidental. Very frequently, at all events (I am not talking about continuous adultery, or adultery accompanied by indignity to the wife or anything of that sort), an act of adultery on the part of a man is not inconsistent with his continued esteem and love for his wife. Some people may say differently, but I do not agree with them. Whereas an act of adultery on the part of a woman, in my opinion, is quite inconsistent with continued love and esteem for the husband. It is a subject in which people may have different views, but that is my view.

618. Would you make any difference if the husband's acts were continuous?—Oh, certainly; I have said so here, "except in cases where the adultery is continuous, "and committed in circumstances of open indignity to "the wife."

619. But that "and," I rather gather from what you say, should be "or"?—Well, I thought about that when I was writing it. I am not sure. I know of cases—and you must have heard of them—where the husband brings into the house the woman with whom he commits adultery. I call that a case where his

conduct is absolutely inexcusable, and I should give the woman the right to a divorce in such a case.

620. The case which was passing through my mind, which I am sure you have met with as I have many times, is where the man has two establishments. There is no open indignity, but ——?—Well, the example that you suggest clears away a good deal of my doubts. If a man keeps a double establishment, making his adultery continuous, I think the wife ought to get a divorce from him.

621. Then with regard to two other causes that have been mentioned; cruelty and desertion. What do you suggest about those, having regard to the husband or the wife?—Well, the moment you get to the question of cruelty you want a definition. You know that the same story of cruelty may be told by the husband and the wife in such a way as to create quite different impressions, and it is difficult to know what cruelty is. It depends very much on the mind of the man who is trying the case.

622. Put a case where it was clear in the mind of anybody trying it that the conduct was such as to render it unsafe?—Well, I should ask the question, is it continuous?

623. Well, I am assuming that?—If the cruelty is continuous, and if it is real (I am assuming the cruelty to be the cruelty of the husband, of course), the woman's life must be made unbearable, and I do not think a woman under those circumstances should be compelled either to remain his wife or to live with him.

624. Then with regard to desertion. I want to draw attention specifically to this, because there will be some evidence about it, I believe. In the present day you get this class of case of desertion. A man or a woman, as the case may be, proceeds off to America or the colonies, or some other country (chiefly America or the colonies) and is never heard of again, and the possibility, at all events, is that they have started a separate establishment, but it is not capable of proof. My wish is to know what your view would be about cases of desertion of that kind, where practically the respondent is dead to the petitioner?—Well, as you, Lord Gorell, know very well, if a man who is bound by a contract conducts himself in such a manner that he evidently does not intend to abide by the terms of the contract, the other party can treat the contract as broken and sue for damages. I should say if a man deserts his wife in such circumstances as to lead the court to the conviction that he intends never to come back, the wife then—or the husband, as the case may be—ought to be entitled to relief by divorce.

625. This class of case was so prevalent in the cases I tried. An everyday case was that a man or woman deserted to America or Canada, or Australia in some cases, and only in those which were traceable (only those could come before the court as the adultery had to be proved) some years after they succeeded in proving that there was another establishment in America. There are many, many cases where that cannot be proved; they are lost in some of the great cities of America. I remember one case where the man had the impudence to write home that he was very happy; had a new wife and a new home and new children, and wanted to know how she was going on! If he had not done that she could not have proved the adultery. But the class of case in my mind when I asked the question was where the respondent has gone and cannot be traced. Then as to crime. I should like your view upon that. The sort of suggestion which one gathers from the foreign codes, and from some witnesses who will come, is that if there is a sentence exceeding a certain time, such as for life or twenty years, or whatever it may be, it practically terminates, so far as living together is concerned, the married life. I should like to know whether, in your opinion, there should be any ground for divorce in such a case?—Well, I should say yes to that. Of course, it is a matter to be thought about carefully, and the crime ought undoubtedly to be followed by a very long punishment to justify divorce; because my opinion is that if people are married the mere fact that one of them falls into evil courses ought not in itself to justify a divorce; as I think, and say in my note, it increases the obligation on the other party to look after the delinquent.

626. Then the last head with regard to divorce in your note is lunacy?—Yes.

627. I should like your views about that?—I can state them quite shortly. I think, as far as possible, before any relief is granted, the lunacy ought to be found to be permanent. I think it ought to occur in early married life. I mean to say if people had been married for 15 years or so, that is to say, if their young days had been passed in the married state in the ordinary way, the fact that at the end of 15 years, or some time like that, one of them becomes a lunatic ought not to be a reason for a divorce at all. Whereas in a case which I need not mention (we all know of it) the lunacy happens within a few months, or a few days even, of the marriage, and when the people are young, then I think the relief ought to be granted.

628. I daresay you know it has been, I think, decided that even if lunacy exists at the time of the marriage, provided it is such as not to affect capacity to contract, there is no reason for a divorce?—I know; and when lunacy is permanent and exists either at the time of the marriage or arises in the early days of the marriage, then I think there ought to be relief.

629. I think that was the last point you dealt with; but you also deal with the case of habitual and hopeless drunkenness?—I regard that as a species of lunacy.

630. Then the last matter but one that your proof deals with is the question of the power of the court to forbid marriage after the decree?—To prevent the incriminated parties marrying.

631. Yes?—Well, I think I may be wrong about it. I had the advantage of talking to Lord Guthrie about it yesterday. I think the Scotch law is a good one; but I begin to hesitate about it when I am told, as I was yesterday, that though the law is so in Scotland, it is never in fact put in force. I did not know that; I thought it was.

(*Chairman.*) We will hear it from Lord Salvesen. But is it correct that in Scotland the court has power to order that the incriminated parties should not be allowed to marry?

(*Lord Guthrie.*) It stands on the Act of 1600, which says that when the name of the incriminated person is entered in the decree of the court, marriage is prohibited; but in order to evade that the old practice was to conceal the name and say the name was not known. The practice now is not so, but the judge, except in one case that I know of, never orders the name to be put in the decree.

(*Chairman.*) That is to say, the law is treated as not operative.

(*Lord Guthrie.*) Yes; I know of one case where a living judge put it in force; he thought the case was a fit one in the circumstances.

632. (*Chairman.*) You think from your note that that power is a reasonable one?—Yes, I think so; I think it would deter people from misbehaving themselves.

633. Do you think it would lead to hardship in certain cases?—Well, I do not think so. I have very little pity—I ought to have, I daresay, but I have very little pity for married people who commit adultery. I do not approve of them getting married.

634. There are so many cases one might have to consider where, for instance, adultery has been committed, say, by a man with a girl who did not know he was married?—Oh, yes; that is just why I should want the discretion with the court. The court would not (or I hope not) prevent the man doing what he ought to do—marrying the girl.

635. I thought it necessary to draw attention to that, because as worded the memorandum is perhaps a little wider than you mean?—"Give the court the power to forbid"; I mean discretion. I do not mean more than that. Putting the instance you put, the court clearly ought not to exercise the power.

636. That is covered by the discretion?—Yes.

637. Then the last point in your proof is as to discretion to grant a judicial separation though the wife has committed adultery. I think you have more or less

dealt with that?—I have dealt with that. I should like to say I have been through the conclusions or recommendations made by Sir John Macdonell yesterday, and subject to what I have said (I differ from him in some matters) they appear to me to be all excellent.

638. Might I ask on that more particularly—the point he brought out as to the judge having the power to see the parties prior to proceedings going far, and endeavouring to effect a reconciliation. There is no power to do that at present, except voluntarily. Do you suggest that would be a useful provision?—Undoubtedly. That is one of his recommendations; I have not touched upon it at all, but I have no doubt at all that every effort ought to be made to bring the parties together again; and though I agree with him that in many cases it would be unsuccessful, it might be successful in some, and the fact that it was successful in a few would justify the whole machinery.

639. That you would suggest, I suppose, should be exercised by the judge?—Yes.

640. With the parties, without anybody else?—Yes. I think you must have known of cases, in your long experience, where you have been able to do it.

641. Well, unfortunately in our present practice, we come to it too late in the day. I am speaking of a power at the very institution of the proceedings?—That is when the power ought to be first exercised, I think, and the power ought to continue up to the very end; attempts ought to be made to the very end.

(*Chairman.*) I think that exhausts all I have to get from you on your proof. Thank you very much.

642. (*Mr. Rufus Isaacs.*) First of all, when you were speaking of misconduct by the petitioner in a suit, were you drawing any distinction in your mind between misconduct before the decree nisi and between the decree nisi and the decree absolute; or would your observation apply equally to both periods? I am speaking of the discretionary bar?—I know exactly what you are talking about. I think it would apply to either; before the decree nisi or between the decree nisi and the decree absolute.

643. And, in your view, should there be any greater latitude in the exercise of the discretion of the judge?—Between the two cases?

644. Yes; and particularly the period between the decree nisi and absolute?—I do not think so.

645. In your view, it should make no difference?—I do not think it should.

646. Would you mind just recurring for a moment to the earlier part of your evidence about the court. According to what you have told us, in your view, cheapness could be attained without removing the cases from the jurisdiction of the High Court?—To a large extent.

647. Almost to the same extent, if not entirely to the same extent, as if the cases were conducted in the county court?—I think so.

648. The chief expense, of course, in the litigation would be bringing the witnesses?—Yes. I suggested a means of avoiding having to bring the witnesses to London. You know quite well that where there are charges of cruelty and adultery corroborative evidence is, as a rule, required by the court. A great deal of that evidence might be taken, I think, either by affidavit or in the way I suggested—by deposition before the officer in the county court or the stipendiary magistrate.

649. I suppose that would involve this, in your view, that, suppose corroborative evidence was given in the county court before either the judge or one of the officials, according to the views you have expressed—suppose there was an affidavit made corroborating in some particulars the evidence of cruelty; if it was desired to cross-examine upon that evidence, of course some means would have to be found to allow it?—Oh, yes.

650. It would be quite impossible to allow affidavits to be used without cross-examination?—If it was objected to, certainly.

651. Yes, I am applying the experience which you and Lord Gorell know so well on the affidavit evidence which is sometimes used as is so useful in a commercial cause.

(*Chairman.*) Would you ask if that observation applies to defended as well as undefended?

(*Mr. Rufus Isaacs.*) I thought Sir John was applying it to undefended.

(*Witness.*) May I say in that connection that very frequently in undefended cases where there is no cross-examination the evidence is, by leave of the court, taken by affidavit. For instance, supposing the adultery has been committed in Hong Kong, or some distant part of the earth, the petitioner applies to the court for leave to prove the case by affidavit, and the leave is granted, because of the obvious inconvenience of proving it in any other way. That, of course, would not apply to a defended case.

652. Do I understand the difficulty with regard to the expense and the practice would only arise in the defended cases?—Yes.

653. Because in the undefended cases you think there is already sufficient power to do it?—I think so. And then in the defended cases I think the court might have jurisdiction to remit the case if the court thought it could be conveniently and properly tried at the assizes or the county court.

654. When you said that, you said it rather with regard to the intervention of the King's Proctor; but you did mean that, did you?—Certainly; I thought I made the statement, not merely with reference to the King's Proctor's intervention, but to the trial of a divorce suit itself.

655. I thought that was what you meant—that there should be power to remit to the county court within certain limits, just as there is now power to remit ordinary actions of debt, and so on?—Yes, where it is more convenient, and the position of the parties is not such as to justify the retention of it in the High Court.

656. I want to follow this out, because it seems important on the suggestion of conferring jurisdiction on the county court. I want to see how far we could attain the end of cheapness if the cases were kept in the High Court. In the undefended cases you say there is power. Is that power under any special rule or statute to take it by affidavit?—It is general practice. Whether it is the practice embodied in printed rules I cannot tell you, but it is the practice in cases where it is inconvenient to get the evidence in an undefended cause by producing the witness, to permit the evidence to be given by affidavit. Of course, you nearly always have the petitioner in court.

657. You nearly always have him called before you?—Him or her, as the case may be. It is very seldom that the petitioner does not appear.

658. Of course, it occurs to me (I speak with diffidence to you after your observation about it) that the danger of this course would be that if you intend to continue the objection of collusion you really have no means of ascertaining whether that affidavit is correct or not?—That is true.

659. Your danger in undefended cases of collusion is, as I think you pointed out, much greater than in the defended cases, necessarily?—Oh, certainly it is. It is only an impression of mine, but I have an impression that a great many of the undefended cases are collusive. I cannot prove it, but that is my impression. Of course, you must distinguish between cases where both parties are willing there should be a divorce and collusive cases.

660. One other matter. I want to ask you about your objection to the county court suggestion. I do not quite follow, Sir John, what necessity there is for the standard of uniformity to which you have referred?—Well, what I think is this, that if you had 50 tribunals scattered all over the country you would have Judge Smith, well known as a man who grants a divorce for little grounds, and Judge Jones as a man who will not grant a divorce in any circumstances at all, and you would find people resorting to the court of the one man and the court of the other man as it suited them.

661. I hesitate to suggest it to you, but may I suggest that that is a condition of things with which we are not unfamiliar at the present time?—Yes; and I say

in my court even there is not uniformity, as there are two judges.

662. And from my experience, which is not as long as yours in the law, that always has been so?—What has?

663. That there has been a difference in views between the two judges who try divorce cases?—Yes, but I think it is far more desirable there should be only two than fifty.

664. But if you have two standards, and all the cases have to be tried by one, it depends on whether you get before an easy judge or a difficult judge whether or not you get a decree?—That is quite true, and you must take what I said subject to that observation, of course.

665. One is familiar, of course, with the fact that an attempt is made to get a case before a particular judge, because it is known that before one judge a decree would be granted when the other judge, who, perhaps, takes a much more rigid view of cruelty, would not grant it?—Yes.

666. But the same principle of law applies?—Yes, but the application of it is different.

667. Then in the jury cases you have twelve men who constitute a jury?—The bulk of the defended causes are not tried with a jury. I think I am right in saying that. Lord Gorell would know better than I do. I say the bulk of the defended causes are tried before the court alone.

(*Chairman.*) Yes, juries come in in a small number.

(*Witness.*) And when once you get a question of cruelty in the hands of a jury you do not know what is going to happen. They disregard all directions and give their verdict (probably quite rightly) according to their feelings.

668. (*Mr. Rufus Isaacs.*) But, supposing you had jurisdiction in the county court, I suggest you would not prevent either one of the parties having a right to trial by jury?—I do not know; I have not thought about that.

(*Chairman.*) Perhaps Mr. Isaacs would like the figures.

(*Mr. Rufus Isaacs.*) Yes, I should.

(*Chairman.*) I will take only dissolution cases. In 1907 the total of dissolution cases was 631; 129 defended, 502 undefended. There were 59 before a common jury and 15 before a special jury.

669. (*Mr. Rufus Isaacs.*) I am much obliged. I do not want to pursue that except to ask this. In your view, then, would it be better that defended cases for divorce should be tried without a jury?—Well, I think so, but that is contrary to the view of a great many other people.

670. May I ask, as a last question upon it, is that because you think there is greater difficulty in getting a jury to apply the principle of law to the particular facts of the case?—Yes; they cannot apply it when their feelings are moved or their prejudices.

671. They decide upon the view as to whether the parties ought to remain together?—Yes.

672. That is your experience?—They may be right, perhaps; they disregard the evidence and find it. It may be a perfectly righteous finding, but one which is not in fact in accordance with the evidence which they are sworn to return their verdict upon.

673. There was something I wanted to ask you about the publication of reports in the press. Has it ever occurred to you (I am speaking now with deference, and only putting it as a suggestion) that there might be a power given to the judges who were trying these particular cases to deal with the publication of reports in the press which, in their opinion, offend against decency?—You mean by that a power to forbid the report at all? It would be quite impracticable to ask a judge to revise the report.

674. Yes, I do not suggest that. He cannot do that, I agree. There are two ways of doing it. One would be that the judge would have the power to forbid the publication of certain details. I am not suggesting that, as it seems very difficult in practice and almost impossible. But what I wanted you to deal with was this suggestion, that suppose the reporter of a paper has offended in the judge's view in the publication of some indecent details which are then brought before the judge: that the judge should have some power of dealing with the reporter and the newspaper. I do not mean by criminal prosecution?—Do you mean by fine?

675. Either by fine or by excluding him from the court?—Well, I think, and I say in the note I have made, that some means ought to be taken of defining the offence to begin with. The offence, I think, might be defined as publishing indecent details; then it would have to be left to the court to say if that offence had been committed or not. Then, I think, it would be a very good thing to put it in the hands of the court to administer some sort of punishment; a fine would be better than anything else; I do not like sending people to prison.

676. The fact that there was some function by the court immediately to be put in operation against the offender—the reporter or the proprietor—would be sufficient in your view to make some of these newspapers which publish the spicy details much more careful?—Yes; and the fact that the newspaper was pilloried would be a warning to others and prevent a repetition of the offence.

677. And if you could prevent it being done by one or two of those who are the chief offenders, you would prevent proximity to it by some of the others who are trying to get the benefit of the sales?—I think so.

678. Now about the grounds of divorce. I do not want to go into any detail with reference to your views about equality, but I do not quite follow what you mean by something you said on this part of your evidence. Suppose a woman established by evidence that her husband at times leaves her and commits acts of adultery, not what I may call of a continuous character, not involving the keeping of a separate establishment, and not involving the heaping of any indignity upon her such as bringing the adulterous person into the house. Am I making my question clear?—Oh, quite,

679. Suppose that happens, is it right, in your view, if the woman feels very keenly what has happened, and does not desire any longer to cohabit with her husband, that they should still be kept together?—It is all a question of degree, in my opinion. The supposition you make is that the man is more or less continuously committing adultery, and that she knows of it. The continuous adultery would, in my opinion, justify the woman in asking for a divorce. You say not keeping an establishment with another woman in it, but nevertheless more or less continuous.

680. Well, I tried to draw the distinction. I admit there is some difficulty in it; I said not continuously doing it, but I intended to put more than one isolated act?—It becomes a question of degree, and I can only say the court would have to determine for itself whether the adultery was of such a character as to come within the description of continuous—continuous as distinct from what I call, though people may not understand, accidental adultery, that is to say, adultery into which a man falls when he is not sober, or something of the kind.

681. Suppose, for instance, as the result of an act of adultery of an isolated character by the husband, a child is born and the wife knows it; would that, in your view, make any difference?—No.

682. It would not?—I do not think so. As you put it in that bald way, I should say no.

683. I beg pardon?—In the way in which you put it—in that bald way—that a particular act of adultery results in the birth of a child. I do not think the fact that a child comes into the world should justify a divorce.

684. But you are making a reservation that may be accompanied by something in the nature of indignity?—Yes.

685. Or of some offence that would make it impossible for her to live with him. I understand your view is that you would allow a divorce under those circumstances?—A wise wife, in my opinion, shuts her eyes to her husband's mistakes.

686. That must depend to a great extent on the temperament of a wife?—Yes, it does, undoubtedly.

687. And the age?—And the age.

688. Suppose you have the case of a wife; of course, any act of adultery entitles the husband, whatever has happened, to divorce her?—Yes; except an act of adultery which is conduced to, as it sometimes is, by the misconduct of the husband.

689. Yes, which would be an answer?—I think there should be cases where a man should be estopped from setting up his wife's adultery—estopped altogether; and though the court may have to deal with the question in the interests of the public, the court would probably not insist on the adultery being charged against her in cases where the husband himself was estopped from alleging it.

690. That brings me to something I want to ask you on that. From the experience you have had in the court, does it occur to you the practice of the court makes it very difficult to establish any such defence as that—the defence of the conduct of the petitioner having conduced to the adultery of the respondent?—Not in defended cases. I think you generally get the whole truth in a defended case.

691. And, of course, the court takes cognisance of it, whether it is pleaded or not?—Yes.

692. Or set up by one of the parties or not?—Yes, if it comes to the knolewdge of the court it is sufficient.

693. It is still very difficult to establish?—Well, it may be. I am speaking of the case I referred to just now when the husband had been misconducting himself with a servant girl in the house under the eyes of the wife. The wife, in that case, did, no doubt, commit adultery, but, in my opinion, it would be an outrage to blame her for it. She was in such a state of despair and grief, and for aught I know she did it perhaps for the purpose of bringing the husband back to her.

694. It is a very good instance. In that case would you bring that within the category of the defence or answer that that was conduct by the petitioner conducing to the adultery of the respondent?—I do. I think if a man brings his mistress into the house he drives the woman very often into despair.

695. Did you yourself so determine? I understand you gave a decision?—No, I did not. I intended to have the case argued before me. The wife was claiming a judicial separation in the particular case I am talking about. The husband, an adulterer, bringing the suit, the wife says, "I admit my adultery, but you the "husband have committed adultery," and it turns out to be true, so that the husband does not get the relief he asks for. But the wife has counterclaimed for a judicial separation. It was said to me: the court cannot grant it because she has been guilty of adultery. I wanted to say to that: true, she has, but it is adultery the blame of which is imputable to the husband and not to the wife.

696. That was really determining the question of whether you should exercise your discretion to grant a decree notwithstanding the misconduct of the petitioner in that case—or the respondent who was making a counter petition?—Yes.

697. That is what that amounted to, was it not?—Yes, that is what it amounted to.

698. One matter I want to ask you about desertion. Have you ever, in your experience, come across the class of case in which there is what I may call a collusive desertion?—I am sure I have, but I have not known it.

699. You have not had the material on which to investigate it?—No. I am perfectly convinced I have. There is a suit which you know of for the restitution of conjugal rights; I am quite sure that in a great many of those cases the desertion is all arranged.

700. In order to found that suit and gradually get a decree?—In order to get a preliminary decree of restitution of conjugal rights and to afford means, later on, of getting a divorce.

701. I was rather thinking of another class of case where the wife can prove adultery against the husband, but, of course, she has to prove either desertion or cruelty (leaving out some other matters). In a case where she cannot prove cruelty and there has been no real desertion; what I suggest what happens very often is, that the wife, having determined not to live with the husband, and having the proof of adultery against him which would entitle her to a decree of judicial separation, and the husband, not wishing to live with his wife, and both of them really being desirous of having the marriage dissolved so that each might remarry—what I suggest to you is that what frequently happens in these cases of a wife's petition is that a letter is written by her to the husband inviting him to return, and the husband writes a letter back saying he has no intention of returning, and upon that she proceeds with her suit, having got what she thinks is sufficient evidence of desertion, and what is really given for the purpose of putting an end to the marriage. That happens constantly?—No doubt. That is done in this way. If the husband is guilty of adultery that in itself does not entitle her to a divorce. But he wants her to get a divorce, and she wants to get it; so he gets her to write a letter saying, "Come back to me"; and he writes a letter (which they know will be written) saying, "I won't"; and thereupon she files a petition for restitution of conjugal rights on those two letters; and then an order is made that he return to cohabit with the wife within 14 days. If he does not do that, that constitutes desertion, and then she can file her petition, and say, "Now he has deserted me and "committed adultery."

702. I was suggesting, rather, does not it seem a pity that all that sort of device should have to be resorted to? If there was once adultery proved by the wife against the husband, and both parties were willing that the marriage should be dissolved, do you see any objection?—No, I see no reason why this suit for restitution of conjugal rights, which is expensive and which takes place—I do not know why in those cases it should be resorted to at all.

703. Would not that result in this: that, supposing the woman proves adultery against the husband, she should then be entitled to have a divorce, provided, it may be, that the parties do not come together again within a certain period?—I think what you mean is this: provided that it is also clear that they do not intend to live together again.

704. Certainly?—I think that is so. At present the parties would have to wait two years before desertion within the meaning of the law could be proved. There is a shorter way of doing it by this proceeding I have talked about.

705. Does not it happen sometimes that the husband will not help the wife to get a divorce though he has not any intention of living with her again?—I daresay there are such cases, but if so, I should give the court power to give a divorce, notwithstanding that the husband will not help, if it appears clear that he does not intend to live with her again.

706. I was thinking of the class of case one has experience of, and which we have constantly had to advise with regard to, and which no doubt you have had to advise in your time: the case of a woman who has a right to judicial separation on the ground of the adultery of her husband, but who is not in a position to prove either desertion or cruelty, but who, nevertheless, has made up her mind under these circumstances of the adultery being proved against the husband that she will not live with him again. Now, if, as I understand you, both parties are willing after a certain limited period of time, according to your view, not to live together again, and that the marriage should be dissolved; you would agree that the marriage should be dissolved, as I follow you?—I am not sure. If I have said that, I am not sure that I meant it; and I am not sure that I properly understand what you mean. There must be, in my opinion, desertion by the husband as well as adultery to justify the obtaining of a decree, but what constitutes desertion is another matter. If the court is satisfied from the conduct of the husband that he does not intend to come back at all, I see no reason why the court should not say so, although two years have not elapsed. That is what I mean.

707. That is what I meant. But, putting the condition that both parties are willing the marriage should be dissolved, and that the husband has no intention to return to the wife?—Yes. I suppose the idea of the

law is that two years gives him an opportunity of changing his mind, and it may be that it is desirable he should have an opportunity of changing his mind; but I assume a case where the court is absolutely satisfied he never will change his mind; then I see no reason why you should wait two years.

708. The only difficulty I feel on that is this. Is there any distinction between that and saying that the court should have power to grant the divorce if both the parties, after proof by the wife of the adultery of the husband, are willing and anxious that the marriage should be dissolved?—Well, I do not think that the mere fact that they are both willing is sufficient. The court ought to be satisfied that there is no hope of them coming back again. I think people change their minds sometimes.

709. Then, the point as between the suggestion I make and your view, if the court is once satisfied that the parties really will not come together again, you agree?—Yes; if satisfied they will not come together again.

710. Now, one question about crime. You spoke, in answer to the Chairman, about a very long period?—Yes.

711. I only want to get your view as to what you mean by that. We have a number of suggestions in the proofs that are before us, and in the codes of foreign countries, which you may express quite roughly as crime involving and carrying with it a sentence which is inflicted of five years' penal servitude. Would that come within your expression of a very long period?—Well, I cannot tell you; I have a sort of idea—supposing it is a man that is sentenced—that it would be to some men a most cruel thing to know that the consequences of his crime included the fact that he was to lose his wife. I do not like the idea at all. But where the term of imprisonment or penal servitude is so long that the woman, being a young woman, can—we will say—not have children and not lead the life of an ordinary woman in the world, then I should say she ought to be entitled to the relief.

712. It would amount, I suppose, to this—and I only put it forward to you as a means of dealing with it—that there should be a power in the court, if there is a sentence we will say of not less than a certain period (of something like five years' penal servitude)—a power in the court then to grant a decree?—Yes, a discretion.

713. But not a right?—I quite agree.

714. Now, one more question. Cases come before counsel repeatedly in which the woman's right, on the proof of the adultery of the husband, is merely one of judicial separation?—Yes.

715. And, in response, the advice, as I am sure you know, is very often given that the remedy is not worth having?—Yes, quite.

716. And I suggest to you that the remedy of judicial separation is really worth very little to a woman?—It gives to the wife the right to live apart from her husband and to get from him support, and that is important.

(*Chairman.*) And the custody of children?

(*Witness.*) And the custody of the children.

717. (*Mr. Rufus Isaacs.*) Of course, the right to live apart from him, irrespective of an order upon him for alimony, she always has. I do not mean she is in exactly the same position, but there is no law which compels a woman to live with her husband?—No.

718. She may go away if she pleases?—There can be a husband's suit for restitution of conjugal rights.

719. Which under those circumstances she probably will not object to?—Yes.

720. She can live apart from him if she likes?—Yes.

721. But she cannot get the status of having the custody of the children and also getting an order of the court that he should maintain her?—No; and those are the advantages of a judicial separation.

722. But there is the disadvantage also, is there not, supposing she has obtained a judicial separation, what is her position then if, for example, her husband deserts or goes abroad and lives abroad and she cannot get the money from him? What would be your view then? Supposing she has an order against him for alimony under a decree of judicial separation, in order to defeat the order for alimony he, as sometimes happens, goes abroad and removes his goods and his property?—Yes, that not infrequently happens.

723. Particularly if there is a case of some other woman in the matter?—Well, I think the answer is this: that if he leaves the country in such circumstances as to show that he does not intend to come back she should then be entitled to a divorce.

724. It would come within what you have said before, that is, the court was satisfied that he meant to keep away from her and never return?—Yes, that she should then get a divorce.

(*Mr. Rufus Isaacs.*) Dealing with it as you would very much—drawing inferences from facts as you would in questions of domicile, when there is the intention not to return.

725. (*Mr. Spender.*) I should like to ask a question as to the publication of reports. Do I understand that the kind of procedure you contemplate would be analogous to contempt of court?—Yes.

726. A summary proceeding?—Yes; the expression you use is quite near enough.

727. It would be put into operation by the judge?—Yes.

728. And not by the Public Prosecutor or a common informer?—I think not. I think it would be far better done by the judge, who, if he is a sensible man, will not take notice of slips and will take notice of serious matters.

729. How would that operate? The judge would wait till the offence is committed, and the next day or the day after, of his own motion ——?—You are asking me now about procedure?

730. Yes?—Whether it would be desirable to have some public officer to bring the matter before the court or leave it to the chance of the judge seeing the matter, I do not know. I should say the former. Take myself, for instance. I say I never see any indecent reports in the papers I read, but that they exist in other papers I am satisfied. I should never know of them unless I was informed of them, therefore I think the matter ought to be brought to the knowledge of the court by some official.

731. Then, how would that be adjusted to the present law of privilege, we will say?—You see, as the law stands at present any newspaper is entitled to publish a fair report of what takes place in a public court.

732. Yes?—That is quite right, and this would be an exception grafted upon that.

733. Then, is it your view that the reporter should be made responsible, or the editor? That is a very important question to newspapers?—I should be very much disposed to make both or either responsible; the reporter for making copy for which he gets paid and the editor for not revising it before he puts it into his newspaper.

734. In that case the editor would have the right of receiving a full report from the reporter?—Oh, certainly. There is no reason why he should not write it down and leave it to his editor.

735. But in that case the reporter ought not to be made responsible, as it is his business to make his notes as full as possible?—There may be a good deal in what you say about that; I am not sure that you are not right—that the reporter should be at liberty to take a note of everything he hears, and leave the responsibility to his publisher and to his editor. I am not sure that you are not right about that; I think you are right.

736. Of course, the actual case is that the reporter sends in his slips (it is a very quick business), and he cannot tell very often——?—Yes, I think you are right.

737. There was only one general question pertaining to the evidence I heard that I should like to ask. You say on the proof before me that you have come to the conclusion that the poor man's home ought not to be broken up, except for very serious reasons. Have you any ground for thinking the present Act of Parliament is laxly administered in that regard?—No; I have said I have made inquiries in three of the London police

courts, and my conclusion is that the Act is admirably administrated, and administered in that sense. I do not know whether I mentioned it, but the magistrates are assisted by missionaries, who do an immense amount of good.

738. (*Sir George White.*) Just one or two questions. Do you think the court would be placed at any serious disadvantage in getting at the truth in having to take affidavits rather than oral evidence from a witness?—Well, I prefer oral evidence; but there are occasions when you cannot conveniently get it, and on those occasions you must take the best you can get.

739. You would resort to affidavits only in extreme cases to save expense?—Yes; I do not like them, but sometimes you are obliged to have what you do not like.

740. May we gather from the answers to the questions put by Mr. Isaacs, and which confirmed your first evidence, that you still approve of the law placing what a great many regard as equality with regard to sexes on the ground of adultery?—Yes, I have no doubt about it.

741. Then, with regard to separations; you are very anxious, as I think anybody who has to administer them would be anxious, that the separation orders should be rendered more difficult rather than more easy. One of the frequent cases that come before a court of summary jurisdiction is the cruelty practised by a husband who is said by the wife to be a very good husband except when drunk?—Yes.

742. And then he subjects her to cruelties of a more or less kind, and often deprives her of any income at the end of the week?—That is, unfortunately, too true.

743. Would you regard that occurrence, happening probably two or three times a month, as a case of persistent cruelty warranting a separation?—Now you are coming to a question of degree, and I object to expressing opinions where I have to deal with questions of degree. I cannot do it; I must have each particular case before me and see the circumstances.

744. I only wanted to get your view as to what you think persistent cruelty is?—But I say this; if we got rid of drink—as I think one of the members of this Commission has said before—the doors of the Divorce Court might almost be closed.

745. (*The Archbishop of York.*) I should like for one moment to go back to the general observation at the beginning of your notes, Sir John. May I take it the evidence you have given is still, in your judgment, governed by the expression of your opinion that, in your experience in the court over which you preside, the advantages of divorce to the rich are so questionable that you do not care to extend it too much to the poor?—I have not been asked about that. I have doubts as to the desirability of divorce at all. I heard some questions yesterday, when your Grace was not present, about the happy condition of Scotland. They were questions which assumed the happiness of Scotland, but I am not sure that Ireland, which has no divorce law, is not just as happy as we are here. However, that is a matter of opinion.

746. I think I may also take it that the inequality that exists with regard to the facilities for divorce is, in your judgment, not primarily due to the difficulty in expense but to the desire of the Legislature to confine the consideration of this class of cases to a select and highly competent tribunal?—I think so. I think it is desirable to keep such questions before the highest court that you can get.

747. And the difficulty of expense is an accident following upon that position?—Yes; and an accident which, if it is really a difficulty, ought to be removed at the expense of the public.

748. You were speaking about the danger of the different standards of judgment in such matters. Have you, with regard to your inquiries about the working of separation orders, had any impression as to the great variety of standard which is adopted even with regard to separation orders?—Yes, I have. I have had very little personal experience of the working of that Act, but I have had sufficient experience to know that the views of stipendiary magistrates and magistrates who make these orders differ enormously. Some magistrates will scarcely make an order at all. Other magistrates will make them on the slightest pretence. That, I think, is a misfortune, but it is a misfortune that it is difficult to avoid.

749. So we might infer, if such a variety of standards exists with regard to separation orders, they are not unlikely to exist in relation to divorce?—I am satisfied they would.

750. You will forgive my ignorance of the procedure of your court, but may I ask this: Even with regard to undefended cases I suppose your court exercise scrupulous viligance even with regard to these undefended cases—as to evidence tendered?—I do not think so. We do our best, but to say that we exercise scrupulous vigilance is to attribute to us a virtue which I do not think we exercise.

751. But it is a virtue to which you aspire?—Oh, yes; that is true.

752. None of us can do more than that?—You know, your Grace, these cases are, as the Chairman has pointed out, disposed of very rapidly, and they must be disposed of rapidly.

753. My point is that if the court, with its long and expert experience, detects something which seems to be unsatisfactory, it would be in a position to call attention to that?—I think so; and with reference to that question I think this observation might be made that the detection is much more likely to take place in a tribunal which is continually dealing with these things than in a county court, where the cases would be comparatively rare.

754. With regard to your suggestion about taking evidence on affidavit in local courts; would not you agree that, specially with regard to these questions (I think the rest of your evidence showed that), an enormous amount of the value of the evidence depends upon the apparent credit——?—The demeanour of the witnesses?

755. The demeanour of the witness?—Undoubtedly. There is no doubt about that.

756. And specially so in questions of this kind?—Yes, I think so.

757. So that, allowing evidence to be taken on affidavit, you would confine to most exceptional cases?—Very exceptional cases.

758. Then, with regard to the question of whether misconduct on the part of either party ought to bar either from the legal remedy provided, must not it be exceedingly difficult for any court to estimate what is the degree of misconduct?—I think so. That was another reason why I think the jurisdiction ought to be confined as much as possible to one court.

759. For instance, you used one illustration, I think: that when a man was drunk he committed an act of adultery that ought not to be visited too hardly against him. But I suggest that doing that in drunkenness might sometimes involve most painful consequences to his wife's health?—Oh, of course it might. I know what you mean. And if it did, and the wrong was inflicted upon the wife consciously by the husband, it would constitute serious cruelty.

760. Would it be possible, in your judgment, to say that any amount, or any character, of adultery on the part of the husband conduced to a similar act on the part of the wife? Would not all that it is possible to say be that it might excuse an act on the part of the wife?—I should like to see that the law; I am not sure that it is the law at present.

761. With regard to publication, do I understand your suggestion, after the questions that Mr. Spender asked, to be that it should be confined to some statutory officer to call the judge's attention to any objectionable reports?—I do not see how the court could do it of its own motion.

762. But would it be possible to provide a statutory officer of the court to call the judge's attention?—I do not think so,

763. Would not the difficulties of which you speak with regard to publication of undesirable details be enormously increased if local courts were established which were frequented by the reporters of local newspapers?—Well, no doubt it would.

764. Would it be partly, in your judgment, the reason why these details are not published, that it is very expensive to send full reports to places distant from that place where the trial was heard?—I think that these reports are very frequently put in the paper for merely mercantile purposes—to sell the newspaper.

765. Would not the publication of them be immensely increased in the local papers where the reporters would send written reports instead of telegraphing them?—I do not think that they do telegraph much. Mr. Spender knows more about that.

766. My suggestion is that details are only sent now in the press?—The local press?

767. Yes, of what may be called illustrious cases?—Yes.

768. But do not you think, if all over the country there were local tribunals before which local persons were appearing in matters of this kind which attract so much curiosity, the local newspapers would inevitably be filled to a degree that is not the case now?—That may be.

(*Mr. Spender.*) In local cases they report them very, very fully. Telegraphing is very cheap; it does not make much difference.

769. (*The Archbishop of York.*) With regard to the grounds of divorce; with regard to desertion, would not what you suggest tend very largely to collusive desertion?—Well, I think at present there is a great deal of collusive desertion—desertion which is merely formal for the purpose of laying the foundation for a suit for divorce.

770. Would not it be exceedingly difficult for any court to judge as to what evidence constituted an obvious desire of the party not to return?—Oh, no doubt it is.

771. And would not it be true to say that if parties knew that with a little skilful arrangement they could make it apparent that they did not intend to live together, they would readily arrange desertion?—Well, that, of course, is true, and, unfortunately, collusion is very easily possible, and not easy to detect.

772. Do not you think, in your judgment, that would be most likely to arise in the early years of matrimony, when questions of differences of temperament had not been adjusted?—Yes, I think so, and, speaking for myself sitting as a judge, I should not be at all hasty in coming to a conclusion that there was a real intention to live apart on the part either of the husband or the wife.

773. With regard to crime. You think it might be possible to allow divorce in a case where the husband, say, was convicted for some prolonged period of punishment? But would your judgment be that the mere record of the sentence should entitle the wife to divorce?—No.

774. You would leave it to the court to go into all the circumstances?—Certainly. As I said, I think it would be in many cases a most cruel thing to add to a man's punishment the parting of himself from his wife and children.

775. Is there, in your judgment, any period of time which would justify a man's being debarred the opportunity of returning to his own home?—I should say if a man is sentenced to penal servitude for life, which means 20 years, that in those circumstances it would not be improper for the wife, if she desired it, to come to the court and say, "Give me a divorce."

776. Even if in the original circumstances there were many reasons tending to mitigate the severity of the moral judgment on the man's conduct?—I would leave all these matters to discretion, and let the judge take into consideration all the circumstances of the case.

777. With regard to lunacy, and the possibility of extending divorce to the ground of lunacy. Would you draw a distinction in regard to, say, a husband, between lunacy in which he is unable to live with his wife and some painful disease of nervous debility or otherwise which might be equally unpleasant for his wife?—I have had a good deal of difficulty on that in finding out on what principle you are to distinguish between, say, permanent paralysis and lunacy; but at the same time I am quite satisfied I would not permit a divorce because even during early years of married life one of the two parties has become permanently invalided. I would not do that. Lunacy appears to me—I cannot tell you quite why—to stand on a different footing.

778. The reason being the degree of hardship, as it appeals to your sense of mercy?—Yes; I have an idea that if the wife or the husband fall ill—permanently ill, the duty of the wife or the husband, as the case may be, to look after the invalid becomes a serious and proper duty involved in the promise made at the time of the marriage, and I should not have it interfered with. You may say, or it may be said, "Well, that applies to lunacy as much as to anything else"; but I do not think I would keep a man or a woman chained to a lunatic.

779. Would you make some distinction between degrees of lunacy; because there may be criminal lunacy, or lunacy confined to cases of permanent, but episodic, hallucination?—Oh, certainly; I would make a distinction. There are people who suffer from epileptic fits and so on. I should not divorce that person.

780. All these questions would be subject to discretion?—Yes.

781. Then, one more question on the grounds for divorce. Drunkenness—you speak of perpetual and hopeless drunkenness. Is there any legal definition of what habitual drunkenness is?—No, none.

782. (*Chairman.*) Oh, yes, there is a statutory definition?—Oh, yes, there is a statutory definition, But I mean I would have no definition here. You must leave it to the tribunal to decide whether the man's or the woman's habits are such as to make the married life impossible.

783. (*The Archbishop of York.*) Then, you do not mean habitual drunkenness in the sense the statute means it. "It is for the court ——?—Yes, I should leave it to the court to say if the drunkenness is of such a nature as to make the married life impossible, and also as to be hopeless. Moreover, I should not allow it as a ground for divorce unless it happened in early married life.

784. Do you think in any court a case of drunkenness can be pronounced to be hopeless?—Well, I do not know. That is the only answer I can make.

785. I have only two more general questions. We have it from you that if there is to be any extension of the grounds of divorce with regard to cruelty, to desertion, to crime, to lunacy, to drunkenness, these causes must all be dealt with on the ground of discretion?—Yes, I think so.

786. Does not that, in your judgment, enormously increase the need for confining the consideration of these cases to a centralised tribunal?—I think undoubtedly it does.

787. Would you say that the possible increase of these grounds of divorce, with the burden it throws on the capacity of the court, would make it exceedingly difficult for questions to be considered by 55 or 60 different tribunals?—I do.

788. There is one question more, Sir John, which I ask for reasons you will appreciate. Do I take it that in the evidence you have been kind enough to give us you leave the principle upon which the confining of the grounds of divorce to the cause of adultery—you leave that principle on one side? I mean, of course, the Christian principle?—I am afraid I do not follow.

789. Well, the principle that has hitherto governed the selection of the grounds of divorce has been the Christian principle that only adultery is a permissible ground for divorce. I take it you, in your evidence, leave that principle on one side?—I do. I do not look at it from a religious point of view at all.

(*Witness.*) I have to go to a funeral, and I am afraid I must ask you to let me go now.

(*Chairman.*) Would you finish on Monday morning?

(*Witness.*) Certainly. If I may, I will at half-past 10.

(*Chairman.*) Yes.

The Hon. Mr. Justice BARGRAVE DEANE called and examined.

790. (*Chairman.*) You are a judge of the Probate, Divorce, and Admiralty Division of the High Court, and you have been such now for five years?—Yes.

791. Perhaps on some of the matters we have to ask about your earlier experience will be very useful. You were counsel at that bar for the whole of your practice?—For over 25 years.

792. In the Probate and Divorce Division?—Yes.

793. So that you came personally into contact with the solicitors, and, of course, the parties to the suits?—And with the King's Proctor, which is perhaps more important.

794. I do not think anybody perhaps possesses so much experience of the court as you do yourself. Now have you your memorandum which you have prepared, before you?—Yes, I have.

795. The first part deals with the question of courts, and I see you commence by saying that relief should be open to all, so far as it is possible to make it so. Perhaps, without going through the memorandum, you will give me a short statement of your views on the question of local tribunals?—I have approached this question, and I have always considered it rather from the moral point of view than anything else; what will most tend to morality. I do not think you ought to look at what is expedient, or what is cheap, or anything of that kind; but what will make for the morality of the country, and my view is, that from that point of view, the question of divorce is more a question for the poor than the rich. The poor are more liable from want of education, and from want of surroundings, to fall into immorality than the rich. The rich have their homes, and their comforts, and their friends, who are of a different position, and who can, by their own advice and conduct, keep people straight; and therefore I feel that this Commission is dealing with the question of real honest morality. Apart from that, of course there is the question, which is the general question, of "a law for the rich and a law for the poor." That, of course, is so commonplace that I need not go into it. I think the divorce laws should be equally open to the poor as to the rich, in the sense that they require it as much as the rich do, and more so, in my opinion.

796. Do you find, in your judgment, it is so at present?—Yes.

797. I mean, do you find that poor people cannot, practically, owing to expense and otherwise, avail themselves of the High Court?—They are absolutely debarred from it, except those who live within reach of London, or who have a little more money than others, or who have saved up.

798. Do you find that saving up has taken many years in some cases?—Many years. I have known a man take 10 years to save money for his divorce, and during all that time he was living on in a condition of being neither married nor unmarried. He was living like that all those years.

799. I remember a case of 20 years?—Well, I have known of 10. I do not remember 20.

800. Still, it is quite common for people to save for many years?—Yes. Now the question of divorce for the poor must mean local courts; you cannot bring them to London—it is impossible; and when you talk about local courts you are at once met with the great difficulty of harmony.

801. Of what?—Unanimity of opinion, and approaching things from the same standpoint. I think Sir John Bigham said just now that, even in our division, we do not look quite with one eye. But that would be far more the case with the judges of assize, who are of different religions, and who look at divorce from different points of view. Some judges will not touch divorce cases, from religious points of view; and that may be so amongst the county court judges; and with magistrates perhaps more so.

802. Then what is your practical suggestion?—My practical suggestion is that you must keep that branch of our jurisprudence in the hands of divorce judges.

803. How would you carry that out?—By letting one of the divorce judges go, twice a year, to certain centres for the purpose of trying divorce cases.

804. And what about the proceedings?—I should let them be done by the probate registrar in the district. They would be very cheap and simple. All the proceedings would afterwards be sent up to London.

805. I think there are 40 probate registrars?—Yes; well, I do not think it is necessary to have 40 courts. But as his Grace pointed out to Sir John Bigham just now, you cannot do without an exercise of discretion, and when once this is done, then *tot homines tot sententiae.* You cannot get uniformity. They talk about expense, but I think you might get economy in court fees. I think they are very heavy. I notice Mr. Musgrave gave you some information about the cost of undefended cases. I am sure if you got the details of the costs of an undefended case, you would find nearly the whole of it was court fees—or the majority of it.

806. We will be able to look through the bills that he left?—Yes.

807. Then your view is to conduct a case in the local registries of the Probate Division, and let the judge, or judges, of the division, hear the case at fixed centres?—Yes, just as they do in London.

808. I am not sure, but I rather think that either the Probate or the Divorce Act gives powers to the judge to sit elsewhere?—I believe so.

809. As a matter of fact that has never been used. Then of course all the proceedings are in London at present. The papers are all here?—Yes. I should keep everything in the country till the *decree nisi*, and from that moment it must go up to London.

810. That would eliminate, according to your view, suggestions of giving magistrates, and county court judges, and other authorities, jurisdiction in these matters?—I should do that. I certainly should not impose on so many people such an intricate question as this branch of our jurisprudence, and it would be more intricate if certain suggestions that are made, and which I am willing to support, were added to the divorce laws.

811. I rather gather, though, that you think it essential that the trial should take place at these local centres before the divorce judges?—Yes, and I am opposed to affidavit evidence very strongly.

812. Do you think the suggestion of affidavit evidence, or evidence taken before some Commissioner, would be satisfactory?—No, the reverse.

813. You think it is essential the judge should see the witnesses?—It is essential as far as possible. There are exceptions when you cannot get the evidence *vivâ voce*, but, as far as possible, it ought to be *vivâ voce.* It is the only possible chance you have of stopping dishonesty.

814. I think at present it is done to prove some facts that cannot be disputed?—You have to satisfy the court, by affidavit, that you cannot get the evidence *vivâ voce*, or that it is so expensive that parties cannot do it. Sometimes it is done as to a question of the validity of a marriage celebrated abroad, of which you can get proof by an affidavit cheaply from the country where the marriage was celebrated.

815. It is done where the judge sees no harm can come from it?—Yes. If necessary, he must insist on having the evidence.

816. What do you say about the jury question in these smaller cases. I do not understand you would apply that local hearing to more important cases?—No, I do not think I should let any jury case be tried at these local centres.

817. And with regard to any limit of means; would you allow any case of any kind to be tried in the local tribunals?—No.

818. You would keep the more important ones in London?—At present, I believe, a person can proceed *in formâ pauperis* if he or she can swear they are not worth over 25*l.*—I think that is the limit—or unless the husband is only making a certain income. Now I think you might raise that, and make it a much higher figure, and allow people to proceed *in formâ pauperis.*

819. Would you allow all classes of cases to be heard in the centres you have spoken of, or confine it to the cases where the person's incomes were put at a low figure?—Yes.

820. You would leave the important cases to come to London still?—Yes, I should confine the local court to poorer cases.

821. The extension of local centres would be with the object of facilitating the trial of cases there for persons who could not afford to come to London?—Yes, the great expense—as witnesses.

822. If they could afford to come to London you would desire to keep those trials in London?—Yes.

823. That would mean, apart from the question of *formâ pauperis*, which excludes solicitors and counsel, that it would deal with the class of case where the income was of a lower character, say, a 100*l.* or 140*l.* a year?—Yes, something like that. There must be some limit. I cannot give a suggestion about that; that is a matter for discussion.

824. Now, any jury cases you would desire to have in London?—Yes.

825. The country work should be done by the judge himself?—Yes, I should let the judge alone decide it.

826. Now, with regard to separation orders, Mr. Justice Deane?—I am dead opposed to separations altogether. I think they lead to immorality. If you have a separation at all it should be only a temporary separation, to see whether time and other circumstances may bring them together again.

827. You are aware at present the magistrates have power to make a permanent order at the first hearing?—Yes.

828. Would you leave that power?—No, I would not.

829. To what extent would you allow it to exist?—Oh, I think three months is the outside of the time they should give. At all events at first.

830. And then there would be further application?—Further application.

831. Would you require that application to be made to the tribunal you are suggesting in the country, or would you leave that to be made also to the magistrates?—Well, my impression is that the stipendiary magistrates in London and the country—I ought not to call the metropolitan magistrates stipendiaries—but the metropolitan and stipendiary magistrates throughout the country I think do the work very satisfactorily; but I cannot say the same of the other magistrates. We get cases up on appeal, as you know, from all over the country, from these separation orders, and we find the most extraordinary decisions.

832. I see your note deals with the grounds on which you think these orders lead to immorality. Perhaps you will expand that?—Well, I have seen a great deal of it. We have numbers of cases—specially undefended cases—where a man brings a suit against his wife on the ground that she is living with another man in immorality. It is suggested very often: Oh, I was only his housekeeper; and so it goes on until a child is born. Then, of course, the idea of the housekeeper is exploded. And you find exactly the same thing in the case of a man. A man and his wife do not agree, and they separate, or are living apart under a separation, and he wants someone to look after his house, and he engages a housekeeper, and the same thing happens. Under these permanent separations people are neither married nor unmarried. They are thrown adrift, especially the poor people, and it leads direct to immorality, and unless you enable them to get divorced it must go on; you cannot help it. It is no good blinding your eyes to what is going on in the country; it is there.

833. You judge this from the cases that have come before you?—Oh, yes; innumerable cases.

834. Then passing to the next matter, I should like to ask your views about the question of publicity. That is the question of reporting. It is not suggested, I think, that the trial should take place entirely with closed doors?—I think it is essential we should keep that which I think is a certain protection, namely, the publicity of the fact that two people are having their case tried, and that there is a decree at the suit of one, but I think any reports should be excluded.

835. Whether decent or indecent?—Whether decent or indecent. I do not think it is necessary to go into any details, except to say who was in the wrong, and who got relief. I think to that extent we must alter the law of privilege with regard to reporting.

836. Would you suggest power to hear in camera?—You have got that now, I think. If there is any evidence which is going to be given, that the judge is informed is of such a character that it is not advisable that the general public should hear it—I have known it done all the time I have been at the bar—the judge has said: "Well, I think it advisable, and I must clear "the court until this evidence is given." That has been done with advantage, but I should go beyond that in the question of reporting divorce cases. I should not allow any details at all to be reported.

837. Do you think it is any real check upon immorality—that there is a fear of publicity?—I think there is a certain amount of check in it. I think a certain number of people would say: I am not going to do anything that will get me into the divorce court. I do not mean actually immorality, but conduct between the sexes, getting themselves into questionable places, and doing things that are doubtful. I think a lot of people hesitate and say: so and so will put such a construction on it. I think it is a protection. They do not like the idea of getting into the divorce court.

838. Then what is the advantage you would expect from not allowing any details?—I think that is a great protection against immorality. One knows perfectly well if you get a crime committed, and advertise it by publication, you will find somebody imitates it. There is nothing so bad as reading about immorality and crime for leading somebody else to do it.

839. With regard to children, do you think it right that they should be able to read reports of their parents' cases afterwards?—Certainly not. It is most fatal.

840. I see your note states "the well-conducted "newspapers do not publish indecent details." Have you anything further to add?—No, beyond this. I know some newspaper proprietors, and I got that information from them—that it is working against the honest newspapers. A decent, respectable paper loses circulation because a less respectable paper gets the circulation instead of the good one by reason of publishing these improper details, and I think it is very difficult, unless you alter the law, to stop it, because these gentlemen have to earn what they can, and get the biggest circulation they can get, and what is the result? Well a certain class of the public will rush after these indecent reports, and a good newspaper suffers. You are not only doing good to the public, but to the good papers, by preventing the others from publishing details.

841. But, apart from the indecent details, you think it is not an advantage on the balance to publish any details of divorce cases?—I should do no more except to protect the innocent, and I will not say brand the guilty, but let the world know who is the innocent one.

842. That is the French system, of publishing the decree, and not the evidence?—I should go a little beyond decrees. I should like the papers to publish this sort of statement: Petition by A.B., defended or not by C.D., allegation of misconduct with E.F., result.

843. But no evidence?—No evidence at all. You must publish the result, or the public will be in ignorance as to A.B.'s or C.D.'s position, whether they were married or unmarried, or divorced or anything else.

844. Sir John Macdonell suggested it would be an advantage if the decree in all cases were afterwards entered on the registers of marriage to show what happened. I do not know whether that has occurred to you at all?—I have not thought about it, but I do not see how it would benefit, because you cannot expect registrars to look up everybody's marriage certificate to add that there has been a divorce.

845. I take it he meant that it should be entered on the register of marriage?—That they had been divorced afterwards?

846. However, that is a detail you have not considered?—No I have not.

847. Then the next point your proof deals with is bearing upon the difference of the law at present as affecting the husband and as affecting the wife. What is your view about that?—That again I treat from the question of morality. I do not see why it is more immoral on the one side than the other, and I think if one is unclean the other is unclean, and I should make it exactly the same for both sexes.

848. With regard to desertion, which is the next subject on your memorandum, what do you say about that?—The first thing I should do would be to get rid of the restitution actions. Originally an order for restitution was made, and if it was disobeyed by the person against whom the order was made, that person was sent to prison for contempt of court. Lord Hannen saw that that was possibly working a grievous injustice, and he had the law altered by the new Act of 1884, which, instead of sending people to prison for contempt of court, enacted that if a person was disobedient to an order for restitution, it should work as though it were equal to desertion for two years and upward, which was the old Act. So now if two people choose they can establish, without any wrong doing, and by the easiest collusion, a decree of desertion. Then the wife goes to the court and says: I have got my decree. Before that I knew my husband had been guilty of adultery, give me a divorce; and they are entitled to it; you cannot stop it. I think that is all wrong. The whole thing is a collusive arrangement from beginning to end, though you cannot put your finger on it. With regard to the other desertion, the statutory desertion of two years and upwards, that comes under the head of separation. I should give a divorce for desertion, but I should take the Scotch law of desertion, and say: If one or the other has deserted for four years, that is a good ground for divorce, and I should give a divorce. I do not know whether the Scotch law works well, but I have seen cases reported, and it seems to.

849. Have you had cases of the character I suggested to the President, of desertion to foreign countries, and the colonies, where the parties have had great difficulty in tracing them?—Oh, yes, numberless cases.

850. I suppose there are a great number of cases where they cannot be traced?—Yes.

851. But where you could prove the desertion by departure from the country?—Yes, the only difficulty in those cases is whether you think the real fact is that the marriage has been dissolved by a higher Power, and that the person is dead, but you get some evidence to lead you to the belief that that is not so, and your inclination is to give the benefit to the person seeking relief.

852. If he or she deserted and disappeared, if they were alive at the end of four years the order would be operative, but there would not be any harm if he or she were dead?—No, he or she is dead to all intents and purposes.

853. Then you deal with some observations on the question of cruelty. I do not quite follow the point?—I do not quite like the word "cruelty" in the Acts of Parliament. I think cruelty should be defined in the Act of Parliament in the way I suggest, which is the old definition, which comes down from the old ecclesiastical courts. I forget who actually enunciated it, but it was referred to in the case of Russell *v.* Russell as a proper definition.

854. "Injury to life, limb, or health, or a reasonable apprehension"?—Yes.

855. Is not that the way the judges usually deal with it?—Yes, but a jury will not listen to you.

856. Does that lead you to the point that that class of business should be done by the judge?—Yes, it is no use getting a jury to say what is cruelty and what is not.

857. The old ecclesiastical judges always dealt with it alone?—Yes.

858. A jury is a modern institution?—It is an institution of the Divorce Act.

859. Then what is your view about the operation of cruelty, assuming it is established? Do you think that should be a ground for divorce, or separation only?—Separation, certainly, in the first instance—temporary separation; because you do not really know, or it is difficult to tell, whether at the first hearing it is a genuine case or not. Very often these things are grossly exaggerated, and it is very difficult, in undefended cases, to take a note of the evidence all the time, and at the same time look at the witness who is giving evidence. You have to do your best to keep attention between the two, but I am afraid the judge is often deceived.

860. And if repeated you would make it a ground ——?—As soon as you became satisfied that there must be continuous cruelty, from the nature of the two people, you had much better separate them altogether —divorce them. Then they will marry again, and live respectable lives.

861. Broadly speaking, you are very much averse to separating people without dissolving the tie?—Yes—without the possibility of marrying again. A life of that sort, by hanging up people between heaven and earth—neither married nor unmarried—is, to my mind, fatal.

862. Now, another point is the question of sentence for crime?—Well, I think if a man or woman commits a crime resulting in penal servitude for five years or upwards, well then for five years he or she is dead, and if you are going to give a divorce, as I think you ought to, for desertion for four years, this is practically desertion. It is the man's or woman's own doing, that they choose to commit a crime resulting in this, and they are dead for that time of penal servitude, and they ought to be treated as dead.

863. What do you say about lunacy?—Lunacy is a question entirely, I think, of whether it is absolutely incurable. They are dead in mind; if they are dead in mind they are practically dead in body. You cannot live with them, and I think that once you are satisfied that a man or woman, husband or wife, is hopelessly insane you had much better divorce them in body, as they have been divorced by Providence in mind.

864. Judging from the general tone of your points it really comes to this, that those causes which make marriage practically invalid and impossible should afford grounds for complete dissolution?—I think that is the only logical conclusion you can arrive at—the only thing on which you can base any principle.

865. Of course, you have specified the leading grounds which can be picked out on which that should be done?—It is a very serious responsibility to put upon the judges. It is a difficult question for them to decide. It must be a question of discretion in every case as to the value of the evidence and the extent to which they must act upon it, and that is one of the strong reasons why I think it would not do to have 55 different opinions upon it.

866. But you would not leave it to the judge's discretion entirely as to whether there should be a divorce. It must be on sufficient specified grounds?—Oh, yes—for him to say if he thought it should be so; of course on certain grounds,

867. What about habitual drunkenness?—I should deal with that as a crime. I should make it so necessary for them to abstain from drunkenness that they would give it up. I do not think that there is such a thing as habitual drunkenness in fact.

868. Not that it is so hopeless?—Not that it is so hopeless. I mean you know of people going to homes for inebriates, and being there six months, and then perhaps they are all right for a year, and then they come across some friend who is unkind to them in the sense of offering them temptations, and they go wrong again.

869. Then the last point which we have had suggestions about, and which I do not think is referred to in your proof, is, whether you would in any view allow a dissolution after a lengthy time of agreement to separate?—No, I think divorce should be entirely a matter of relief for the innocent person. I do not think people should be allowed to put their heads

together to agree to anything. I think if they choose to do that they must not come to the court.

870. You have seen the suggestion. It is on some of the foreign codes, and I think the suggestion was made by Sir John Macdonell yesterday—a persistent agreement during so many years, three or four, or something of that kind. You do not take that view?—Not at all. People marry for better or worse, and they must put up, as far as they can, with the position of things. They ought not to have the right to say: We have consented to a contract to marry and we will consent to a contract to set aside the marriage. Marriage ought to be looked upon as a much more serious thing.

871. You look upon divorce as a matter to be granted on certain serious grounds, and as a matter of relief only?—As a matter of relief.

872. I daresay you are aware, at the present moment, a wife, for instance, may have a ground for divorce, but choose only to pursue a claim for separation. I daresay you have met with those cases?—Yes. I do not think that should be.

873. Do you think the respondent should have a right to demand that it should not be a decree of separation, but a complete divorce, assuming one of the grounds mentioned is established?—The way out of that is, that I should do away with separations altogether. I would not have separation. It is a living death—that is the way I look on separations. It is wrong altogether. Either they must live together or live apart, and that means be divorced.

874. I do not know whether there is anything else?—No, unless it is about the King's Proctor. There might be a difficulty about the King's Proctor's intervention with regard to these cases tried in the country. I am not quite sure what he does do at present; but I had a conversation with Lord Desart the other day.

875. Lord Desart will be here. My impression is that the King's Proctor at present receives information from various persons—anybody that communicates with him all over the country, and then he intervenes in London. Do you see any difficulty in the intervention taking place in London, and the trial in the country, if necessary?—I do not see any difficulty. I spoke to Lord Desart just before he went abroad, about it the other day, and he saw no difficulty. I told him my view about these local courts, and I think he agreed with me about them; but you will hear what he says.

Adjourned for a short time.

(*Chairman.*) I think I have finished.

(*Witness.*) There is one thing I ought to have said before, and that is upon the question of damages. It is a difficult point; but I think that question of damages is very much abused. We have done away with what used to be damages in cases of crim. con. expressly by Act of Parliament; but we reserved this question of damages, and it is a perfect farce the way it is done, as you know. You go to the jury, as counsel, and you pile up, as far as you can, the injury which the unfortunate husband has suffered—injury to his reputation and feelings, loss of profit by having to employ somebody in place of his wife, and so on, and you get a verdict from the jury, and the judge immediately takes it away from the man and applies it to other purposes. Well, it seems to me ridiculous. Instead of damages, I think the court should have power to say what sum of money the co-respondent should pay to settle upon the wife in future.

876. Or upon the children?—Or children. I would do away with damages.

877. You would have that apply to these cases in the country, too?—I would. I would do away with the damages in that way.

878. You would leave the judge to say: This is a case in which the guilty person should make some provision?—Yes, and say what he should do.

879. (*Mr. Brierley.*) I was not quite clear with regard to what you said as to separation orders. Do you intend to say that, except that orders should be made for a certain time, the power of the courts of summary jurisdiction as to granting orders should remain as they are at present?—I think they should have power to say what should happen to the children and what allowance should be made to the wife.

880. And also whether the separation order should be made for a certain time?—Yes, to make it entirely a matter of discretion to say whether it is a case. They might say: We will give you a fortnight to think it over.

881. That they can do now?—Well, I think that should be extended.

882. You say they should not have power to make it for more than a certain period?—Yes.

883. And then the parties to come again?—Yes, and then inquire if the wife had changed her mind, or whether the husband had made some arrangement or promise, and would get her to take him back.

884. Do you think it necessary for the Courts of summary jurisdiction to have power to grant separations in cases of desertion only?—No.

885. Because I am afraid, in spite of the decisions of the judges in Dodd *v.* Dodd and Harriman *v.* Harriman, still these orders are made?—Yes, they are.

886. And made very frequently?—Yes, too freely.

887. But the courts still have the power?—Yes.

888. Would you have that taken away from them altogether?—Yes.

889. That would be restoring the law to the state of things under the Act of 1886?—I think so; that is my view.

890. (*Judge Tindal Atkinson.*) I think your opinion is based on the assumption that the parties in the cases that arise among the poorer classes in the community will pay their own costs. The suggestion has been made that the State should pay the costs?—I think you will find a great difficulty in getting the State to pay for litigation.

891. I agree, therefore I think we must proceed on the assumption that the costs will fall on the suitors just the same as at present?—Yes.

892. With regard to the county courts, they have the advantage, have they not, of locality?—Undoubtedly.

893. They have in addition the advantage in almost all instances of a first-rate registrar and staff?—I am not prepared to say. I have acted as deputy county court judge on one circuit, and I did not come to that conclusion.

894. Well, perhaps things have improved. It is not my impression of my circuit. I should say every registrar is a solicitor of the first position in the district?—Yes, that is so.

895. And most of the clerks are perfectly competent to perform the duties cast upon them?—Yes.

896. Now there is another matter which is important in dealing with this question. The registrar is either a high bailiff, or there is a high bailiff in addition, and there is a staff of under bailiffs. That being the state of things the judge has ample opportunity of finding out all about persons within his own circuit. Would not that be an advantage if you confer a jurisdiction of divorce upon the county courts?—I do not think so.

897. Will you explain why?—I think it is not always an advantage that the officials who have to deal with litigants should know too much about them.

898. But I understand there are two objections to the county courts having jurisdiction in divorce raised by the President and by yourself, the one is the difficulty of collusion, and the other is the want of uniformity of decision?—That is an important one, I think.

899. Dealing with collusion, would it not be an advantage to the judge to be able by means of his bailiff to ascertain all about the parties?—It depends on the bailiff.

900. Well, that, of course depends on the bailiff?—Yes.

901. Then again, I may say ——?—You have got a very good bailiff.

902. With some exceptions the bailiffs are men upon whom you can entirely depend?—Yes.

903. There must be some means; even at the instance of the King's Proctor, by which he gets information he must apply. Why do you suppose——?—Yes, to an independent person.

904. Why do you suppose bailiffs of the county courts are not equally competent to give information?—I do not know them.

905. Then you would have to leave that ——?—You would have to leave that to a matter of inquiry as to who they are and what they are.

906. In reference to collusion: in an undefended case when the parties are before you, how do you detect collusion?—You can only smell it, if I may use an offensive expression.

907. Do you think a county court judge is not equally competent to smell it?—I am not quite sure. I should not like to say he is not—some of them. I do not like to be offensive, but there are county court judges and county court judges.

908. Then you think some could smell collusion?—I could name perhaps 30 whom I would absolutely trust.

909. Out of 55?—Out of 55; half, we will say (I do not mean I distrust the others), whose opinion upon this sort of question would be absolutely reliable.

910. I suppose you agree that the county court judges are brought more into contact with the poorer classes than the High Court judges?—Yes, but I am not sure that you are brought into contact so much with the people I am mentioning. You are dealing more with the people who get into debt.

911. Well, that is only a small percentage?—I am dealing rather with the more respectable class than, I am afraid, those are whom you have to deal with.

912. It is only a small proportion of people who get into debt, but, as you have said, as deputy county court judge, you know that the parties who appear before the county court judge in person, the judge conducts the case for them?—Yes.

913. He examines the witnesses, and cross-examines and re-examines?—Yes, he is counsel and judge.

914. In process of time do you not think that gives a county court judge experience in detecting perjury and imposition upon the courts?—I have no doubt it does. I am afraid you are not quite understanding my point. My point is not that the county court judges are not excellent judges, but they are not the judges to try these cases—or the bulk of them are not.

915. I am talking now of the detection of collusion, which is one reason given why the county court judges should not try these cases?—I do not say for a moment that Sir John Bigham and I are more capable of detecting collusion than you, or every other county court judge, but I am conscious myself that we do not detect it, and I am not putting that as a reason why I would not send these cases to county court judges. It is not a question of collusion. I may say this: We have sometimes to get the assistance of common law judges to come in, and I remember once the late Lord Ludlow came in from the Court of Appeal, and the first thing he did when he came into court was to say, "I know this court is brimful of collusion, and I mean "to put a stop to it," and he went on for the whole term, and he did not find a single case of collusion. I am perfectly certain there was plenty of it, but even he—sharp judge as he was, could not detect it. It is difficult to detect collusion. I am not putting it on the ground of collusion, but entirely on the ground of what I said just now, *tot homines tot sententiae.*

916. Now, suppose the evidence of Mr. Musgrave is perfectly correct, that every case undefended tried in the London district costs from 40*l.* to 45*l.*, or even 50*l.*?—So I read.

917. Does that not make it obvious that the poorer classes, who cannot afford that sum, are denied justice in obtaining relief in divorce and matrimonial difficulties?—Most undoubtedly.

918. Now your suggestion is that the High Court judges should try those cases in localities in the country?—Not the high court judges—the two judges of the Divorce Division.

919. But do you confine the judges who are to try those cases to the two divorce judges?—I think that would be the proper thing to do. I think the fewer minds you bring to bear on that branch the better. I might say this: there is one of the common law judges who has had a good deal of experience of sitting in our division, and that is Mr. Justice Bucknill. I am not sure that he would not do perfectly well to go, but I think he would object.

920. I do not know whether you have worked out a scheme by which the two divorce judges could do the work in the country, having regard to that figure from 40*l.* to 50*l.* for undefended actions tried in London alone?—I have not. I have not attempted to do it, because it is all a scheme which would have to be worked out; first of all you would have to find out how many places you would go to; secondly, you would have to arrange whether you would take anybody down with you. I do not think we should want a marshal. I do not think we should want to take a cook, and all sorts of different things which judges who go on circuit have to do. It would have to be worked out to see what the expense would come to, and I have not attempted to do it.

921. If you fixed the places in the county where the assize courts are held then you would not lessen the expense much to suitors?—I would not have nearly as many places as the assize places. I would limit it to a great deal fewer than that.

922. You would consolidate certain counties?—Certainly.

923. And then appoint a centre?—Certainly, depending upon the population. I do not think it need be in an assize town.

924. If you take the costs at 45*l.* for trying actions in London alone, how would parties get to those centres without being prevented from want of means?—It is a matter of degree is it not, entirely? I have suggested as a matter of giving security for costs that we should limit the amount to be secured to 5*l.* for the wife's costs. I think we might manage that perfectly well to cover the costs of solicitors, and two or three witnesses—they never call more than three, about.

925. Assuming you put Suffolk, Essex, and Hertford together for this purpose, and you fix your place of trial at Hertford. How much would it cost to suitors to come from the north of Suffolk and Hertford?—Forgive me, but you are taking an extreme southern limit.

926. Well, fix it at Chelmsford, which would be nearer the centre?—I beg your pardon, judge, but you are taking three counties which I have not gone into, but I should say those counties would not group. You have to think of the railways more than anything else, and I do not believe you could find a worse set of counties than those three for railway communication for a common centre. I know them because it is my old circuit.

927. Suppose we take the circuit town of each county, would not the same difficulty arise there, that the parties could not bring their witnesses?—Well, I do not know. I think if I ——

928. A man earning 24*s.* or 25*s.* a week could not bring himself and his witnesses and incur all the expense if he had to travel that distance?—I do not think that is so. I think if you give a little time to it, and get a few statistics as to population, and study Bradshaw a little bit, you would be able to group counties quite comfortably without any very great difficulty in arriving at a good centre.

929. You would admit there would be great facilities if a county court judge exercised this jurisdiction in every one of his towns?—I should say, certainly. Given everything else the county court judge is essentially the proper person.

930. And you are aware that there is scarcely any instance where the suitors do not live 10 miles as an extreme distance from the county court towns?—That I was not sure about. That is a matter which you know.

931. Now the amount in reference to a *formâ pauperis* case. You suggest an encouragement to the suitor to apply to sue *in formâ pauperis* by raising the sum?—I think so. I think you ought to put it as much as you can within reach of the poor people. It is a great tax on them. Assuming the figure is as at present. It takes the greater part of the capital, so to speak, that the man has in order to provide the funds.

932. Is your experience the same as mine, that the poorer classes in this country do not like to sue *in*

formâ pauperis?—I have no experience at all about it. I know we have plenty of them in the Divorce Court. I cannot say whether they like it or not.

933. I think Mr. Musgrave said there were only 10 or 15 in the year?—We have a good many I am afraid who come. In fact it is the only means that some have of getting relief at all.

934. On this question of the want of uniformity of decision. Assume that this carrying out of these local centres as you suggest cannot be practically worked out, then do you agree that the county courts are the only tribunals open?—Yes, if my proposal cannot be carried out.

935. If your suggestion cannot be carried out, then the county court is really the only local tribunal?—Quite the best. I will not say the only, but quite the best.

936. On this question of want of uniformity: that is an objection which equally applies to the justices who make separation orders?—I am afraid that is a very strong argument against you.

937. You would not suggest that that Act should be repealed?—Which?

938. The Separation Act?—The Married Woman's Act?

939. Yes, 1895?—I should. I should have it very much altered. I would not keep it as it is.

940. You observed that under that Act the justices have to decide almost all the points that arise in a suit for dissolution of marriage. Supposing the husband alleges adultery by the wife as an answer to the summons, the justices must decide the question of adultery?—Yes.

941. Then if the wife sets up the defence that the husband has condoned the adultery, or connived at it, or been guilty of conduct conducing to it, the justices have to decide that?—Undoubtedly.

942. In addition to deciding the question of persistent cruelty?—Yes.

943. Well, does not that come to the same thing as application for divorce?—I quite agree, but I have had the honour of sitting with Lord Gorell in the Divisional Court, and we have had to complain bitterly of the extraordinary way in which the justices have arrived at these decisions, and we have had to reverse them.

944. But it shows that the Legislature had, notwithstanding the want of uniformity of decision, conferred ——?—I think it is the worst Act the Legislature ever passed, myself. I do not know what all the stipendiary magistrates think of it, but I know some of them think so.

945. That would lead you to the conclusion that the county court judges are quite as well able to deal with those matters as the justices?—Ten times more.

946. There is one other matter I should like to ask you about. The custody of, and the access to, the children, is a very important matter?—Very.

947. Is it not a matter to be further considered that the county court judge is always accessible in his own district, and if you have cases in which it is necessary to decide access, or the custody of the children, is it not an advantage to have a judge who could dispose of it at once? The parties could not afford to come to London to the High Court. Would it not be better for the county court judge to have that power?—I do not see any difficulty in the judge who came round deciding it.

948. That is a matter that has to be attended to at once, perhaps?—But we generally do it at once.

949. But suppose the parties resided in the north of Yorkshire, and the judge from the Divorce Court is not coming for another six months. Are the parties to come to the judge in London, or wait six months?—But I do not see why it should not be done by the registrar in the district pending suit. Access in London is done by the registrars—not custody, but access.

950. But you confine the registrars to the probate registrars?—Well, a good many of them are people that come from the Central London Registry.

951. But those registries are few and far between, are they not?—I am not quite competent to say.

(*Chairman.*) There are 40. There is one for Yorkshire, and the only one there is Wakefield. In Lancashire there are three—Lancaster, Manchester, and Liverpool.

952. (*Judge Tindal Atkinson.*) I think you do not agree with the President in one thing, that the evidence should be taken on deposition, either before the county court judge or registrar, and sent to London?—No, I do not think so. I am quite opposed to affidavit evidence unless it is absolutely essential.

953. In reference to the King's Proctor, is there any insuperable difficulty in the registrar of the county court acting in that capacity and making proper inquiries?—I have not thought about that, and I cannot say at the present moment, speaking off-hand. I should not like to say. I know the King's Proctor at the present moment has a solicitor-agent nearly in every place, and he does not make the inquiries personally, but through his agent in the district. Therefore, I should think there would be no real difficulty about it.

954. That would be very much like sending to the registrar for information?—Much the same thing.

955. And I should think very likely he does apply to the registrar?—Very likely, but Lord Desart can tell you that.

956. There is another question on uniformity. Supposing there was not uniformity, so far as divorce is a matter of discretion; it is only a question whether it would be rightly exercised?—On certain principles. You cannot leave it absolutely wide, but you must have certain principles on which you exercise your discretion.

957. Now, the causes of divorce, whether they are extended or not, are arbitrary and definite causes—not matters of discretion?—Oh, certainly.

958. Therefore it depends on the character and nature of the evidence which is to prove the ground?—Yes.

959. It is only in respect of that that the judges may differ?—Yes.

960. As to the evidence, the inference is to be drawn from facts?—That is one reason why I said, instead of the word "cruelty" I should have in the Act of Parliament an exact definition of what is cruelty.

961. Then if you put that into the Act of Parliament, one of the principal grounds of differences would disappear?—Yes, except as to the "reasonable apprehension"; that is rather difficult.

962. Therefore there would be less objection to county courts having jurisdiction if that were defined by Act of Parliament?—On that point.

963. Supposing differences of opinion did exist, and one judge—as it was said, Judge Jones refusing as much as he can to grant any divorce, and Judge Brown in the adjoining district grants them very freely, is that a reason for not conferring on the county court judges the power so that the judge who rightly does it should do so, whether or not the judge in the adjoining district exercised his power properly?—The people could not help themselves. They would go to the judge who was there. It would be a little hard if the judge in that district took a strong line of his own.

964. Yes, but there is no reason why the adjoining district should be deprived of jurisdiction because another judge in another district does not do his duty?—That is true.

965. Now would not the county courts be good courts for conciliation? The suggestion was made by Sir John Macdonell that before proceedings for divorce were taken the parties should have the right to resort to some tribunal by way of conciliation?—I should be very glad to be relieved of that, personally.

966. But if it were forced upon you you would have to do it?—Yes.

967. And would not the county courts be excellent tribunals as tribunals of conciliation?—I really do not know. We have a very painful and disagreeable duty sometimes of seeing parties, even after cases are set down for trial, and it is one of the most difficult things that I ever have to do. You see one and then the other, and put before them the points, and put some pressure upon them to come to some harmonious result, and it is most painful and most difficult; but I should think

some of the county court judges—I will not say all of them—could do that with ease more or less.

968. For the benefit of the parties?—Always for the benefit of the parties.

969. (*Sir Lewis Dibdin.*) I think under the Divorce Act of 1857, section 18, there was power for the judges of assize to deal with divorce matters?—I think in the first Act of all there was power to have these causes tried at the assizes.

970. Under the 1857 Act, section 18?—Yes.

971. And that was repealed by the Matrimonial Causes Act of the next year?—Yes, but I do not know the reason of that.

(*Chairman.*) I have heard a reason; I doubt whether it is a sound one. I have formed an impression that the judge of assize has no office where the parties could deal with interlocutory matters, but it was suggested that the judges, having tried it for a time, seemed to have administered decrees by consent and all sorts of things.

(*Witness.*) The judges themselves wished it taken away?

(*Chairman.*) No, I have heard it said that at that time some of the judges of assize took matters by consent, not having experience.

(*Sir Lewis Dibdin.*) I am afraid I am not at liberty to interrogate the Chairman, but if I may interrogate him through you, or in any other way, I should like to know if it is known as a fact that these judges of assize ever exercised that power?

(*Chairman.*) I do not know. I have only heard that said.

(*Witness.*) There is no reported case of it.

(*Chairman.*) I looked through Hansard to see if any reason was given for passing that Act which put an end to that.

(*Sir Lewis Dibdin.*) I did the same.

(*Chairman.*) And I found none.

(*Sir Lewis Dibdin.*) No.

(*Chairman.*) There is no debate on it at all.

972. (*Sir Lewis Dibdin.*) I thought you might be able to throw some light on why that was done?—No.

973. Now, with regard to using the county courts and the local registries, you have said, and I quite agree, if I may respectfully say so, that there should be no sort of charge made against judges or officials of county courts that they are not adequate for their duties in any way. But is it not always, speaking generally, and not only in reference to county courts—an objection where the public official knows too much about the people and the neighbourhood where he has to perform his duties?—Very often cases are removed from a district for that reason. An application for a *certiorari* is made, because the people know too much.

974. Is it not easier to get at a local man—a bailiff—for the purpose of bribery than a man about whom nothing was known by the parties at all?—I am afraid so, but my experience as to bribery is not extensive.

975. Now, when it is suggested that everybody has a county court within 10 miles, I suppose that would only be relevant if this proposed jurisdiction were given to every county court?—Really I do not know.

976. If you only selected certain county courts it would not be true ——?—If there were fewer than 55. I suppose there are several hundreds ——

(*Judge Tindal Atkinson.*) Several hundred towns, of course.

977. (*Sir Lewis Dibdin.*) And if you only selected certain county courts, the fact that some county court is within 10 miles from certain people would have no particular relevance?—No.

978. With regard to separation orders. I think I followed you that the separation order as granted by country benches, other than stipendiary and metropolitan magistrates' courts—that your experience is that the discharge of those duties is very unsatisfactory?—Very.

979. I suppose that is inevitable from the composition of those tribunals?—Well, of later days we have had—this sounds political, but it is not—all sorts of people appointed as magistrates, and they all have jurisdiction over these cases, and you cannot tell what fancies they may have. I will give you an instance the other way which may help you. We had a case only a few weeks ago in the divisional court from a London metropolitan magistrate. There was evidence given by the woman and by two witnesses to the effect that her husband had on three occasions violently ill-used her. The case came up before us on appeal by the wife. In spite of this evidence, the metropolitan magistrate had refused to make an order. We sent it back to him, because he had not given his reasons. It seemed unintelligible, because here was distinct evidence by three people, all proving three—I think, perhaps, more—acts of violence constituting persistent cruelty. I wrote to the learned magistrate, and I said, "Would you mind "telling me the reason, because it is not apparent?" and he said, "Oh, the reason is clear enough; I did "not believe any one of them." But you cannot trust a country magistrate to do that. They say, "Oh, here is evidence," and they make an order. You want a trained intellect to see if that evidence which is given is really trustworthy evidence besides being sufficient.

980. And you would agree an ordinary country bench is a tribunal particularly liable to be influenced by emotion?—Prejudices of all kinds.

981. I mean it is a tribunal where the decision goes by the majority, is it not?—Yes, always.

982. And where the tribunal is particularly liable to be affected by, say, a woman's story?—I think so. You know I think they are all absolutely desirous of doing what is right and just, but it is a question of ability to do it. They are not so constituted. They have not got the mental calibre. I do not mean strength of mind, but they have not got the intelligence in the right direction to come to a decision. They are not judicial; that is the real point of it.

983. I do not know whether your experience agrees with my own, but if there is a member of a bench who has the misfortune to have any legal experience, his views are very frequently put down to red tape?—Very often bound by case law sometimes they call it.

984. I wanted to ask you with reference to what I may call perhaps the most important part of your evidence as it strikes me; the grounds on which you think the jurisdiction for divorce should be enlarged. It is only with regard to one of them that I wanted to ask you a little particularly, and that is this: You are in favour, I think, of divorce being allowed in a case of a long sentence of imprisonment, say five years?—Yes.

985. I think you will agree that this is a very difficult case?—Yes.

986. There is a good deal to be said on both sides. If I may just tell you what I mean——?—You see it is not that there should be a divorce in that case, but that it should be open to the other party to apply for a divorce.

987. That is what I was going to ask you. You do not propose *ipso facto* a divorce in that case?—No.

988. But that the wife or the husband, as the case may be, can apply?—Yes.

989. And that the judge should have a discretion?—Yes.

990. If such a case came on, have you thought out how the criminal's case is to be put. He or she, as the case may be, is in prison; how are the merits of his or her side of the case to be brought before the court?—As they are now. He is brought up if necessary under an order by the Home Secretary, and can instruct anybody to appear, and he can appear himself if he thinks right. He is assisted in prison if he thinks necessary to make a statement of his defence. It is all done for him.

991. Is he to have advice at the expense of the State?—No.

992. So he must defend himself, or be undefended?—Just the same as if he is not in prison.

993. (*Chairman.*) In bigamy cases it constantly happens that a woman asks for a divorce. Perhaps the judge will tell us how that happens?—There is a regular way for him to be defended.

994. (*Sir Lewis Dibdin.*) And that acts without unfairness to the criminal?—Perfectly.

995. Then what, in a case of that kind is to be done about the children. Say a man has been convicted,

and is in prison, and the wife is getting along as well as she can with a family of young children; she applies to the court for a divorce; what is to be done about the children?—The man is earning nothing; he is in prison, and the woman is to be freed from the link of the marriage. How do you suggest the children are to be dealt with?—I do not quite follow. Of course she would have the custody of the children. You do not mean that?

996. Suppose she did not want the custody of the children?—She is bound to have it by law. She is the mother. The man is practically dead for the time, and the mother must have them. She is responsible for them.

997. And in cases of divorce you would leave that obligation on her?—Certainly. The reason why I think you must extend the law of divorce to that sort of case is that if the man is going to be taken away from her, by his own misconduct, for a considerable length of time she is left without means, and she ought to be able to allow somebody else to take charge of her and keep her morally—not immorally, as is often the case.

998. Yes, that side of the matter is quite clear, but there are difficulties?—I ought to say this, that I think in all these cases of imprisonment the court would exercise its discretion partly upon whether the man could while in prison maintain his wife. I think if he could maintain his wife and children there ought not to be a divorce, and that ought to be part of the discretionary power left in the court. It is only if the husband is practically dead to her in every sense that she should have a divorce instead of having to live on and go to the workhouse until he comes out, which is often the case.

999. Now I want to call your attention to the criminal's side of it. It is the fact that the tendency of all modern changes in the law is to make sentences remedial rather than punitive only?—That is the idea.

1000. Would not it add to the appalling position in a criminal's condition if, in addition to his sentence, there is the opportunity for his wife to get a divorce?—That depends on the nature of the criminal's mind. If a criminal is such a brute, so regardless of his wife and children, that he goes on committing crimes when he knows that the result will be that he will be sent to penal servitude, then he goes on with his eyes open, and he cannot complain, and in such a case I do not think you would get a deterrent effect to operate on such a man.

1001. You would not say every man who comes within the criminal law is such a brute as to be outside of all consideration?—Certainly not. There are people, such as financiers, who find themselves in difficulties, and go to penal servitude, and they are not brutes in that way. It is a matter of degree,

1002. In the case of the criminal who was the best type of criminal, if you understand what I mean—the least depraved kind of criminal—would not the punishment be heavier in his case than in the case of another, if, automatically added to his five years' penal servitude, there was the possibility of a divorce?—I think it might, but he would know it beforehand. He would do it with his eyes open, and it might be a deterrent.

1003. Is that a reason for making the penalty more severe than you otherwise would do?—No, but I think it might be a reason for his not doing it.

1004. I think you said you are not at all in favour of divorce by mutual consent?—No.

1005. Would it not be the case that the enlargement of the grounds of divorce you advocate would have the effect of loosening the sense of responsibility or the sense of permanence of the marriage tie—if those changes were adopted?—I do not quite follow your question.

1006. If your Lordship's suggestions were adopted the effect would be that divorce would be easier than it is at present obviously?—Obviously in one sense, yes; not easier, but more open—more grounds for it.

1007. Would not the effect of that be to render the marriage tie less permanent in the minds of people generally in the country than it is at present, because they would feel there were more ways of getting out of it than there are at present?—Now you are opening another wide question.

1008. I know it is a wide question?—I am aware from things I have been told that at present some people marry under the impression that if they do not suit each other they can get a divorce—and that you cannot stop. I heard a girl say herself one day, "I am "going to be married; it does not much matter if we "do not get on; we can get divorced, you know."

1009. Would not that impression be much more justified if the suggestions you have made were carried out?—I cannot help saying it would. But the way I look at it is, what is best for the community from the moral point of view entirely. I say from the moral point of view it is better to enlarge the grounds than keep people as man and wife who are not living as man and wife—that is the way I look at it.

1010. Even though it has the effect of making marriage a less permanent institution in the eyes of the people than it used to be?—Yes. You know I was brought up a very strict Churchman, and have remained a strict Churchman, and I am not at all sure that the divorce laws have not worked harm to the community; but here you are after 50 years; you have been doing it, and you cannot go back——

1011. If I may interrupt, Judge, you mean worked harm from the social point of view?—From the social point of view. I think it is a misfortune that the divorce laws were ever passed, and that for the last 50 years we have been working under them. But we cannot go back, and if we cannot go back we must make them better, and that is the only position I think we can take up.

1012. There is only one other question I want to ask you, and it is also a big one. What relation do the suggestions you have made with regard to the alterations or the enlargement of the grounds of divorce take towards the religious teaching of the New Testament?—The New Testament?

1013. Yes?—Well, of course all divorce is contrary to the New Testament, except on one ground. But the Old Testament has been put on one side, because there there was the punishment of death for adultery, you know. That has been put on one side, and perhaps Our Saviour's teaching would be modified now. We do not know.

1014. You do not suggest that the alterations you propose would be in harmony with our Lord's teaching?—Certainly not; you cannot say that for a moment.

1015. (*Lord Guthrie.*) Mr. Justice Deane, why do you think the existence of the right of divorce is a misfortune?—Because I think it made people think less of the marriage tie.

1016. Then it is in the interests of the State you are speaking—or is it in the interests of the parties?—Both.

1017. In your view, does the existence of divorce have no deterrent effect at all to prevent adultery?—I think it has some.

1018. Take a wife who knows she will lose her position as a married woman, and be almost an outcast; that she will lose her children, and that she will lose her means of support. Do you think in that case the knowledge of that certainty does act as a deterrent?—I have not the least doubt about it.

1019. Then, that being the one side, what is the other side?—I do not quite follow.

1020. That being the deterrent, is there, in your view, any temptation to counterbalance that in the other direction?—From a woman's point of view?

1021. Yes?—Nothing except—I do not know what word to use, and I was going to use the word passion, but something which really takes away her moral level. No woman, I think, whose life is a high one, or a good one would ever commit adultery.

1022. It has been suggested, Mr. Justice Deane, in some questions that the knowledge that she may be divorced, and then may marry her paramour, will tend to her fall. Have you ever seen any indication of that in any of the cases that have come before you, including the letters, hundreds of which you must have read?—Numbers of cases.

1023. You have seen that?—Yes, where the woman who is married to a poorish man meets a man of means, and is attracted by him, and then comes the balance between right and remaining a pure woman with a man perhaps she is not very fond of, or going over the line and being able to marry a rich man whom perhaps she does not care for. There are numberless cases of that.

1024. Is that the conclusion you have drawn from evidence?—Yes.

1025. Including letters?—Letters and *vivâ voce* evidence, and things she has been heard to say.

1026. That is very interesting. I have not seen that. Then, to revert to the original question, you have got the deterrent you have mentioned which tends to morality, and you have the temptation which tends to immorality. Is there any other element in the question of public policy besides these two which we should consider—deterrent, on the one hand, and temptation, on the other?—You mean only on the part of a woman?

1027. Yes; take a woman. Is it a question of balance between these two?—Oh, I think religion comes into it.

1028. But put aside that for a moment. Assume the marriage tie is dissoluble according to the best interpretation of the New Testament. There is a great difference of opinion, you know, but assume that?—I do not know whether you have included this: people find they do not get on—constant bickering, and unhappiness at home, say, and to get out of this she looks for somebody, and meets with somebody, and is taken by somebody perhaps who is willing to seduce her. That is a matter to consider.

1029. Do you include in that, collusion?—Oh, no; the husband does not know anything about that case.

1030. Then do you say, owing to the divorce law a woman will be found, in order to get rid of her husband, to commit adultery?—Certainly.

1031. Have you seen evidence of that?—Yes, in numberless cases.

1032. In any reported cases?—I have no doubt some are reported, but I cannot give you the name of one

1033. Does anything else occur to you on the question of balance?—I cannot remember anything else at this moment.

1034. Then turn to the man's point of view on the question of public policy, putting aside the religious side. What do you say?—What will keep him from going wrong?

1035. Yes; does the existence of divorce tend to make morality or immorality, in your view?—I think that is one reason why I advocate having the same law for the woman as for the man. I think a great number of men are really without fear of divorce, because they know that they have to be proved guilty of some other matrimonial offence, and I think if it was known that such a man would be divorced if he was simply proved an adulterer it might deter him, and very likely would.

1036. Take things as they are in Scotland, Mr. Justice Deane, where the law is that the guilty person shall be treated for financial purposes as dead, and in the case of the husband being guilty his wife has her legal rights, which are either a third or half of his whole moveable estate, and if in the marriage settlement he has settled his fortune on her to come to her at his death, that she will then and there get the whole of it without any right of the court to make any provision for him whatever. That would act as an additional deterrent?—Well, that does not affect us, because we have powers of variation of settlement, and of ordering an allowance or a settlement.

1037. Would you explain that, because in Scotland many of us think there should be power in the court in the case of the guilty wife to provide some settlement for her. What is your power?—If there is a settlement we have power to vary it in any way we think best for the benefit of the wife or children.

1038. The wife being guilty?—Even if guilty, and if there is no settlement we have power to order a settlement to be made to provide for her and the children. That is a matter of discretion in the judge.

1039. Is that availed of regularly?—Oh, regularly.

1040. And is the amount given to the guilty person mere maintenance above want, or a substantial and comfortable maintenance?—If she is the guilty person, just to keep her from want and temptation—the great idea being to keep her from temptation, and very often we insert a clause *Dum casta—dum casta*, or *dum sola*.

1041. Take the ordinary middle-class people. Take a man with 100*l.* a year?—You do not have a settlement in the case of a man with only a weekly wage; but if he has any property you make a settlement.

1042. Then supposing you had no divorce, would you allow judicial separation?—That is going back to the old ecclesiastical law—divorce *a mensa et toro*.

1043. But we have the view put before us against divorce and in favour of judicial separation, and we have put before us the view in favour of divorce but against any judicial separation. What do you say, apart from divorce, about judicial separation? Is that a wise thing in any circumstances?—I think not. I have a very strong opinion against judicial separation.

1044. People should either remain married or unmarried?—Yes, either live together or be free of each other. It is no use having a half-way house; it only does harm.

1045. With regard to the inequality, may I ask this: In England, you proceed by entitling a woman in certain exceptional cases to sue for divorce on the grounds of adultery?—Yes.

1046. There are, I notice, five exceptional cases: adultery in the case of incest, adultery in the case of bigamy, adultery in the case of rape, adultery combined with cruelty, and adultery combined with desertion?—Yes.

1047. Sir John Bigham suggested the addition of one or two other exceptions, particularly a case where there was known and continuous adultery. Is it your view that, instead of adding to the exceptions, it would be better to leave each case to be decided according to its own circumstances, and leave a woman, for instance, to say if she will avail herself or not of the crime being adultery?—Yes, certainly, I should.

1048. If we do not take that view, do you agree with him in adding the exception of known and continuous adultery to the Act. That is in the section of the 1857 Act, you see?—You mean continuous adultery as being equal to adultery plus one of the other grounds.

1049. Yes?—Well, of course it follows, I should say.

1050. I should think so. But would not there require to be other exceptions? Take a man convicted under the Criminal Law Amendment Act. Is it not monstrous to think that that should not be an exception when bigamy is an exception?—And rape?

1051. Well, take bigamy, which may be quite innocent, because a man may marry on a false report of his wife's death?—The Criminal Law Amendment Act includes all sorts of offences.

1052. Well, a young girl, with consent, under the age of 16. That would manifestly follow?—Yes.

1053. But you prefer to abolish that elaborate system of equality?—I should.

1054. With regard to juries, whatever is done here, though this Commission does not include Scotland, may seriously affect Scotland, we never try divorce cases by jury, though we have power to, because the judges always think it is better not to. How far does your view go about juries?—I am afraid it is a selfish question. Personally, I think justice is more done by a judge than by a jury, but it is a great comfort sometimes when one has a very great conflict of evidence to put the responsibility off one's own shoulders, if the parties desire it, on to a jury. But I think, personally, in the Divorce Court greater justice is done by judges than by juries, and I will give you a very strong instance of it if you like. I was a great many years at the Bar, and I was generally asked beforehand: How shall we try this case, shall we have a jury or leave it to a judge? And I always looked upon it from this point of view: if we have a thoroughly good case we will have a judge, if we have a doubtful case we

will have a jury. We have a chance with a jury, but none with a judge. That is why I want to get rid of damages, because a great many cases have to be tried by a jury because you have damages claimed. My case is, get rid of damages and the great majority of cases will be tried by the judge.

1055. The words in the Matrimonial Causes Act, 1857, are "And the parties or either of them may insist "on having the contested matters of fact tried by jury "as hereinafter mentioned." Suppose it had been for the judge to decide it, you would not have had any difficulty?—The difficulty is to get rid of Magna Charta, which says that every British subject should have the right of trial by jury, and that is what that means.

1056. But if the matter had been left in the hands of the court——?—If the House of Commons will override Magna Charta there is no difficulty.

1057. (*Chairman.*) If you look at the Probate Act you will see the court can decide whether there is to be a jury or not?—Yes, I was dealing with the Divorce Act at the moment.

1058. (*Lord Guthrie.*) With regard to publication, might I ask this question? Would it meet your view if the essence of the pleadings was allowed to be published, plus the judgment, or would you object to the essence of the pleadings being allowed to be published plus the judgment?—I rather object to the judgment.

1059. You would?—Yes, because one has to go into details in the judgment; you have to go through the case to show the grounds upon which you are proceeding. If your judgment was merely Decree Nisi, with costs, there would be no objection. But if you have to go through the case to show the grounds of your judgment, that you believe a witness who swears so and so, and disbelieve a witness who said so and so, you are letting the whole mischief out.

1060. Could not that be cured, as I have done myself, by pencilling on the side of certain portions of your judgment: "This is not to be printed"?—Here I am speaking in a difficulty, too. We have a regular body of reporters in the Divorce Court who have been there for years—most respectable men. They know exactly what the court approves of being reported and what not, but when there is a *cause celébrè* coming forward you get a lot of people from the country taking a note, and that is where the mischief is done. Our own people never do harm; they are most careful and right-minded people.

1061. What is your view with regard to the court being open or shut, apart from reports?—I think that should be left entirely to the judge. I think, as a rule, the court should be open, because I think it would be a very great misfortune if the public began to think that things were being done behind closed doors. There are certain cases which we always try in camera, but those are not of public importance. They are not the same thing at all.

1062. In your view would it not be desirable that the power of the judge should be put expressly in a statute rather than left in the very vague way in which it now stands?—As far as possible yes; but you must leave a certain amount of discretionary power.

1063. Now in England you have a law of recrimination. Do you approve of that? So that a person can sue if he is guilty himself. Now, we have not that in Scotland. Have you formed any definite opinion whether your system or ours is better, because it is a very important question?—That is a matter I have often thought over, but I have never spoken about it to anybody else. You know there is an Act of Parliament which says that no person who is a party to the proceedings shall be liable to be asked, or bound to answer, any question tending to show he or she has committed adultery. I should like to see that rescinded.

1064. In whose interests, the public interests?—In the interests of morality and justice, because that would stop a whole lot of people coming into court as petitioners who had been guilty themselves of misconduct.

1065. Then you approve of people being stopped coming into court who have been guilty of misconduct?—Certainly.

1066. You think a remedy if given at all should be to the innocent people only?—There are certain cases—Lord Gorell will remember many of them—where women come into court and pray for a divorce on the ground that their husband has been guilty of cruelty and adultery, and they have sometimes admitted that they themselves have committed adultery, and pleaded extenuation, and sometimes it has been left to the King's Proctor to find out and bring it in on an Intervention. That is where the discretion of the court comes in. If the petitioning woman has been guilty of adultery without excuse then we refuse relief, but if that woman has been driven into adultery by her husband—many cases of that sort have been proved in court—driven on to the streets, put into such a state of penury and poverty that she has been obliged to go to the protection of some other man to be supported and to live, we give her the benefit of our discretion, and give her a decree. But it is not so with men, because there is not the same temptation or such compulsion exercised upon them. A man is never compelled to commit adultery, but women may be. I do not know a single case myself where a petitioning husband has been relieved if he himself has committed adultery. There was one case I may say. I am not going to mention the name, not long ago where the Court of Appeal over-ruled the court and rescinded the decree that had been granted, the petitioner having himself committed adultery.

1067. Do you approve of the existing state of the English law, which does not make that obligatory, but gives the court power to refuse it?—Discretion. The words are that the court shall not be bound to grant a decree if the petitioner has been guilty of adultery.

1068. I suppose it is in the same way that you cannot sue for breach of contract if you have yourself broken the contract?—Yes.

1069. With regard to collusion in a case of adultery, what do you exactly mean by collusion? One form of collusion is where there is no guilt at all, and they make up a story of guilt; and another form of collusion is where the man agrees with his wife that he will go and commit adultery in order for her to get a divorce. Another form of collusion is where the adultery is real, but the man says to the woman: If you do not defend I will give you 100*l*. Do you include all those three in the word collusion, or is it where there is a fraudulent story got up?—One is not collusion at all. You cannot collude at what does not happen.

1070. Do you call that fraud then?—No, it is nothing. There is no adultery, and the collusion is immaterial.

1071. But that does happen, does it not; a purely fictitious story is made up?—Oh, yes, that is one; but the real collusion is where two people agree that one shall commit adultery for the purpose of obtaining a divorce, and the adultery is committed; and the third one is more like connivance—conniving at the adultery.

1072. Do I understand your view, in favour of the suggestion of the judges of the Divorce Court going circuit as against the county court judges doing it would not be affected by an extension of the ground of divorce and an increase in the number of divorce cases?—I do not think so. I cannot say at present, but it seems to me a good many cases that come up to us now would be tried in the country. We should get a slight increase, but I think if it was done in the country we should get them done fairly quickly. Nearly all of them would be short cases, but I do not think expense ought to stand in the way. I look at this from a big national point of view.

1073. I do not know whether you are at all aware of the Scotch system, under which there are poor agents as they are called, appointed annually by the legal bodies all through the country; and in Edinburgh not only poor agents but poor counsel selected by the faculty of magistrates and appointed annually, and the result is that any poor person can get it where they reside, and then by communication with Edinburgh the case is carried through by the agent and by counsel, without any pay. Further, there are no court fees, and

further, the shorthand writers are not paid. Would it be possible, do you think, to introduce a system throughout England of that kind?—Well, that is something like what is being attempted in the criminal courts. The judge is asked to get State aid for the prisoner, and he appoints a solicitor and counsel.

1074. Would it be possible to extend that system?—It is done, I think, entirely *in formâ pauperis* cases. That is rather the meaning of "*in formâ pauperis*";—you get that advantage. I believe you pay much fewer fees to the Treasury and you get a solicitor and counsel for nothing.

1075. But in that case that I have mentioned the one difficulty that would remain would be witnesses' expenses?—Yes.

1076. (*Mrs. Tennant.*) May I assume, Mr. Justice Deane, that in forming your opinion in favour of equal opportunities for divorce for men and women you have given consideration to the argument that in the case of the woman the social consequences are greater?—I think so.

1077. And you feel the moral consequences are equal?—I think the moral offence is equal. I think there is no excuse for a man. I have never seen it myself. I have never understood why a man should be excused for an act of immorality. He is a free agent. I have heard it said that if a man after a big public dinner gets excited with drink and goes and commits himself before he goes home he ought to be excused. I do not see it myself. He is equally unclean. It is the old Biblical idea.

1078. I did understand that, but I was anxious to ascertain that you had given consideration to the other argument, and in spite of that consideration you have come to that conclusion?—I have.

1079. I notice in your memorandum, you mention confirmed and hopeless lunacy as a possible extension. Have you considered intermittent lunacy—in a case where the husband or the wife comes out of the asylum and rejoins the other?—I have. I do not think intermittent lunacy ought to be a ground for divorce. That comes under the case of "for better for worse," and the person is still, so to speak, alive, but where it is hopeless lunacy the person should be treated as dead, and is really dead, and divorce should be allowed.

1080. Would you include cases where the doctor is of opinion that a return to the asylum is inevitable. There are such cases?—I do not think so long as there are periods in which the two people can live together as man and wife you can say it is hopeless lunacy, and you should not give a divorce until it is hopeless. That is a question of medical evidence, and the court would have to decide on that. I can see a difficulty. I had a will case not long ago in which an unfortunate son was left out of his father's will because he was a "hopeless" lunatic, and after the father's death he recovered and got perfectly well. Therefore there is a great difficulty, and the court would have to exercise very great care in arriving at a conclusion, and it would be only after conclusive evidence that it would do it.

1081. I want to ask you, if I may, one or two questions about the reforms that are in your mind with regard to separation orders. You mentioned three months as a possible period of trial—as the limit, in fact, for the duration of a separation?—I am afraid I have not considered it very carefully as a definite figure. I said three months on the spur of the moment when I wrote my minute, but my view is rather that it must be a matter for the magistrate. He has seen the people, and if he thinks a week would do to wait, or a fortnight or less—but I do not think he should give more than three months in the first instance.

1082. You would leave it to his discretion to give a shorter period?—Certainly.

1083. Would not it be in certain cases that there would be the same immorality—in the case particularly of the husband—if the limit were as great as three months?—I do not quite follow.

1084. Your opinion is, that if the wife si withdrawn from the husband, and he has to employ a housekeeper to look after his children and home, there is a great liability to immorality?—Oh, yes, quite so.

1085. Then that might be as great in three months as in six months, in certain circumstances?—Yes. I do not think it is quite as great, because the probability is, the man will not have gone and taken away everything and left her without any means of living. Of course, the whole point is the means of the woman living. She is a poor woman with children, and she must have some means of living. She might have neighbours or relations living near who will help her to keep her going for a time. It must be left to the magistrate.

1086. That is the case on behalf of the woman, but there is a case on behalf of the man. There is his inability, perhaps, to look after his children?—Well, the man is the person who makes the living, and I do not think he is in the same category as a woman left by him.

1087. Even if the woman has to go away from the man?—Certainly not.

1088. Except where the woman is unfortunately the bread-winner; but I was thinking not of his being unable to make a living for his children, but being unable to look after them?—Yes, when he has to get somebody to look after them?

1089. Yes. I am trying to arrive at the importance of fixing a date and the difficulty of fixing any date. But I think, perhaps that would be met by your suggestion that it should be an outside date, and that it be in the discretion of the magistrate?—I think that is the way to get out of it. It is an outside length of time for the separation, but less than that if necessary.

1090. Then I gather your opinion is that the county court judge is ten times I think was your expression, a better adjudicator in matrimonial matters than the borough or county magistrates?—Yes, taking them as a rule. I mean there are numbers of gentlemen in the country who are thoroughly judicial people—people who have been members of the bar—I am speaking of them as a general body, but I do not think it is right to trust so large a mixed body. You may get a first-class intellect, and you may not.

1091. Would you draw any distinction between the county court and the summary jurisdiction court, leaving out of question the magistracy and their qualifications?—But the magistrates' is the summary jurisdiction court.

1092. But leaving out of question the characteristics of those who preside over the courts, would you draw any distinction between the courts themselves as suitable places for the hearing of such cases?—No, I do not think so.

1093. Then if the reforms that you advocate with regard to separation orders were carried out, do you think it would be a good thing to remove the hearing of these cases to within the jurisdiction of the county court?—You see it is a very difficult question to answer. As I said, I could give you the names of certainly 30 county court judges whom I would absolutely trust, because they are all men of somewhat similar modes of thought, and I am quite sure that the judge who is here could also name some 30 men pretty well like himself, with the same sort of experience and all that, and we should get a very good body probably, but if you are going to leave it to the large body of county court judges I am perfectly certain we should end in confusion.

1094. I am speaking of separation cases, not of divorce?—But I am talking of the whole thing. The whole thing would go to some other tribunal in the country. Divorce and separation.

1095. Then do you advocate this period of, say, three months, and the temporary separation being decided by a judge of the Divorce Court?—Not those which are at present dealt with by the magistrates.

1096. Those are the cases I have in mind?—They must still be dealt with by the magistrate; but I would not extend their jurisdiction beyond what it is, and I would cut it short by limiting it as I have suggested.

1097. But you would rather see those dealt with by magistrates than by county court judges?—I am

afraid it would be putting too big a burden on the county court judges if we gave them all those cases. I do not know how many there are.

(*Chairman.*) 7,900.

1098. (*Mrs. Tennant.*) The reason I put the question is it has been suggested that a great many of the separation cases which are taken to the magistrate would not be taken if the applicants had to go further afield to the county court. It would be a deterrent?—A preliminary investigation, you mean, before they took proceedings at all.

1099. A hearing by the county court judge instead of by the magistrate?—I am afraid that would not work at all in those separation cases. That is a question Mr. Brierley could answer better than I can. I should think in those cases the magistrate before whom the cases comes would be the only person to see them.

1100. I mean that the applicants themselves would not move? That is what you are suggesting?—A sort of preliminary interview with the judge?

1101. No, I mean people who now bring trivial disputes on which sometimes they may get a separation would never take those disputes at all if they had to take them to the county court instead of to the summary jurisdiction court?

1102. (*Judge Tindal Atkinson.*) I think Mrs. Tennant means, suppose parties go to a county court?—Which parties, separation cases?

1103. (*Mrs. Tennant.*) Yes, if the woman were compelled to go to the county court, she would have to wait three or four months and to go a greater distance to the county court. Would not that deter people going for a separation order?—I should like to deter them, between you and me.

1104. You do not think it practicable?—No, I do not. I think the less easy it is for these separation orders to be obtained the better, because I do not think that half of them are wanted. If you have a real case of assault the police will deal with it. It is all these miserable trumpery cases, and it is very often that the woman would like to get a fixed income. It is more for a sum of money to be paid by the man than to get rid of him.

1105. When you say questions of alimony and maintenance should be dealt with by the registrar, you mean he should secure to the woman the sum under a maintenance order given against the husband?—Do you mean in these separation cases?

1106. Yes?—Oh, no, he never secures that. It is never a big sum.

1107. Nobody secures it?—No.

1108. Has it occurred to you, as a reform, that somebody should?—But you cannot secure a weekly or monthly payment. All you can do is to make an order that he pays so much out of it, and you can deal with him if he does not, but apart from that you cannot secure—that is to say, put into settlement—a sum of money if he has not got it. Do you understand the distinction?

1109. Yes, quite. But is it not very unfortunate that the woman has to go and see the man from whom she has been separated in order to get it. There is no obligation on him to send it?—Oh, no.

(*Mr. Brierley.*) No, the obligation is on him to pay her.

(*Mrs. Tennant.*) And if he neglects his obligation.

(*Mr. Brierley.*) It is her business then to apply for a summons or warrant to arrest him for non-payment.

1110. (*Mrs. Tennant.*) Is not that throwing a great deal on her, and making it very difficult for her. Of course we shall receive evidence on that point, but I take it a great many maintenance orders are entirely neglected?—A good many are because the man bolts, goes away altogether, and is never heard of again.

1111. And even if he does not bolt ——

(*Sir Lewis Dibdin.*) I think what Mrs. Tennant is thinking of is the order is enforced like an affiliation order, but an affiliation order cannot be prosecuted for a month, and during that month the woman starves or ——

(*Mr. Brierley.*) No, you are thinking that some official should enforce it?

(*Witness.*) But it is done, is it not? I have seen orders from the magistrate when they have been brought up to us for reconsideration that the money has to be paid to the chief constable or to some official, and then he collects it so that the husband and wife are not brought into contact.

1112. (*Mrs. Tennant.*) That is within the discretion of the magistrate?—Yes.

1113. There is no obligation on him to make the order in that way?—No.

1114. Do you think it would be a reform if it were so?—I think it would be a good thing, but there is another side to that. It might be a good thing to bring husband and wife together that they may come to a mutual arrangement. On the other hand if the man is a real brute it might lead to further assaults.

1115. Yes. I can see there are ways in which it might be good, but would it be practicable to suggest that the magistrates' attention should be drawn to its consideration?—I think it always is. I am quite sure I can speak of Mr. Brierley's class of magistrate. The stipendiary and the metropolitan magistrates always consider how the money is to be paid, and it is generally inserted in the order.

1116. May we take it that this has been done in the great number of cases in which there is no reference in the order as to the method of payment?—In a great number, except that he is ordered to pay so much.

1117. And in those cases the magistrate is of opinion that it is well, with the hope of bringing the husband and wife together again for her to visit her husband in order to secure her money?—Yes, if the case is of that sort that it does show a chance of their making it up with each other, the more they are brought together the better; but otherwise the less they come together the better. I can give you an explanation of what I mean. Sometimes in divorce cases, while the case is pending, before it comes on for trial, there is a question of access to children. Sometimes it is advisable that the husband should have access, if he is respondent, to the children at the wife's house, where she is living, and that brings them together, and they may make it up. On the other hand if things are so bad that there is no chance of a re-union you keep the man away from the house, and he is guilty of contempt of court if he goes there; but if you make that order it absolves him. It is the same sort of principle. You have to find out the nature of the case.

1118. I think I understood in your scheme for dealing with divorce suits you would only have two judges—the present complement of judges—in charge of the country districts?—I think if you keep to two it would be better. I should have one if possible. I do not think you can have the matter left in too few hands—heads I ought to say.

1119. But do you think it would be possible to overtake the work?—I cannot tell you really at present. I should think it possible. There is another matter again which I have heard of. I have heard they are going to cut the Long Vacation shorter, which will give us an extra fortnight. A fortnight in the year will dispose of a great number of undefended cases.

1120. I suppose we shall have to assume that additional facilities would lead to an additional number of suits?—I should think so, probably.

1121. So as a basis of calculation one ought not to take the average number of suits up to to-day, but prepare for an increased number?—Well, it is difficult to average anything in that way, but I should think you could do it to a certain extent.

1122. (*The Archbishop of York.*) I only want to ask one or two questions to make clear the impression of your evidence on my mind. With regard to your strong objection to separation orders. Does that go so far that you would like to abolish judicial separation as it is ordinarily understood?—As permanent, yes.

1123. What would the position, in your judgment, then be in the case of a wife who had conscientious objections to a divorce, and desired protection from her husband? She would have no remedy?—She could get temporary separations. It would mean having to repeat them.

1124. Nothing more?—No. I mean we have cases of Roman Catholics; they will not have divorce.

1125. Yes, but a very large number of other women strongly object?—There are a very large number of High Church people who are somewhat similar, yes.

1126. Would not your proposal inflict rather a wrong on them, and leave them without a remedy?—Well, I should rather like to put that pressure upon them to come together again.

1127. But there are considerations where it would be practically impossible for strong reasons that they should?—Where there is something that does not give them grounds for divorce?

1128. Where there is something that would give them ground for divorce?—I think I see what your Grace means. You mean people who have conscientious objections to divorce, and if there is no separation, they are left without any relief?

1129. Yes?—I see the difficulty.

1130. I am not asking the question in the air you know?—No I am sure you are not.

1131. I may take it it had not occurred to you?—No, it had not occurred to me at all.

1132. Then with regard to divorce on the ground of desertion, say, for four years. Would not it be extraordinarily easy for persons to connive at desertion in order to obtain a divorce; and would not such an extension of the grounds lead in many cases to being practically a divorce by mutual consent; that persons would consent not to appear or live together or have any intercourse with one another for four years, and then have an undefended case?—I do not think you would find it work so in practice. I do not think we find cases of desertion for two years at present as collusive. The nearest approach to it is a case I was in some years ago where the husband went away and returned on the evening of the day before the two years were up, and it was put forward as a collusive arrangement and was accepted as a collusive arrangement and was not allowed; and that is the longest time I ever remember to have known of a case of desertion by collusion.

1133. But would not the temptation to that be much stronger in the case of desertion being enough for a divorce?—Desertion for four years is a long time, your Grace. I do not think you would find divorce by collusion on desertion for four years; but that you would get to know more from Lord Guthrie.

1134. With regard to the extension of the grounds of divorce to sentence for crime. You base the principle of your proposed extension on the fact that in certain cases the husband is really dead to his wife. But in the case of a sentence, say, for five years, the outstanding feature is that the husband is bound to come to life again?—A re-incarnation.

1135. I mean it makes all the difference?—Well, it comes to that. But you may say a man is dead to his wife if he commits adultery.

1136. Yes, but that is on another ground?—Yes, but it is the same principle, to my mind.

1137. In your opinion, then, all that a woman would have to do if she desired a divorce from her husband who had been sentenced to four or five years' penal servitude, would be to prove the sentence?—Prove his conviction and sentence.

1138. And that would be enough?—Yes.

1139. So that a man might have been sentenced under circumstances of peculiar hardship and not really constituting him a person of the lowest moral character, and yet he might at the end of five years find his home broken up, his children taken from him, and any chance of restoration, humanly speaking, at an end?—He could be heard, you see; it would not be done behind his back.

1140. But I gathered from you he would not be permitted to make any defence?—Oh, he would be entitled to make a defence. I beg your pardon; I misunderstood you when you said it would be sufficient to prove his conviction and sentence. That of course would be the essence of the decision; but there might be grounds for saying: We must not deal with this case until the matter has been more thrashed out, and now we have the Court of Criminal Appeal there would be ample opportunity to thrash it out.

1141. I do not want to labour the point of this here; but it is rather important. I speak from real knowledge of convicted prisoners. I have been a prison chaplain. There are many cases where a man has been sentenced, and rightly sentenced; sentenced in such a way that his sentence would not be reversed or appealed, but who may be in almost every other respect an admirable man, and one fall may be the greater reason for his being restored after. What defence would he have if his wife said he was dead to her for five years?—I think you cannot legislate for the few.

1142. My suggestion is—perhaps having a kindlier view of the criminal classes—that the cases are not so few?—I should have thought they were, speaking as a man that has done a good deal of criminal work in his time. I was 12 years on the circuit.

1143. But you wish us to take it your view is, no matter what the circumstances were that led to the sentence, the mere fact that a sentence was made, and made in a way that could not be reversed and repealed, would entitle the wife then and there to obtain a divorce from her husband?—Yes.

1144. Then I think there is another question only. I was impressed by what you said, and I only want to get it clear that I was right in interpreting what you said—that you are convinced in an enormous number of cases brought before you at present there is collusion; but that with all the experience of your court it is impossible to detect it?—I think so. More than that; I speak not only of my own powers of detection, or my brother judge, but of the King's Proctor, who has every agency at his command. You hardly ever get a case of collusion established; perhaps two in the course of the year; not more, certainly.

1145. Therefore, we may take it as certain, if that is so with the High Court, with all its exceptional experience and power, it would be far more so if the jurisdiction were extended to a large number of county courts?—Well, I think so, pace our friend the judge here!

1146. With regard to the magistrate; you might conceive of the trial of cases on a wider system. Does it occur to you to express any opinion on the stipendiary magistrate as a more suitable officer than the county court judge?—To begin with there are not enough of them; that is one difficulty.

1147. They are constantly dealing with matrimonial difficulties?—As I said before, I think the magistrates and the stipendiary and metropolitan magistrates have done splendid work. I am not a bit afraid of leaving it to them, or to the county court judges if you could select your judges in the county court, but I do not know all of them.

1148. One more question. I was much impressed by what you said, that you were disposed to think from your experience that it was a misfortune that the divorce laws were ever passed. I should just like to know why you think it has been a misfortune. Is it because of the effect on public morality?—Yes. I think that the idea of the strength of the marriage contract has been very much weakened by them. I think in old days people settled down. To begin with, I do not think they married without greater care and greater thought as to whether they were suited to each other. Now they are willing to take the risk, which is a great mistake, and I think a great many marriages ought never to take place which do, because people think they can get rid of each other afterwards; they could not before the divorce Acts; they had to make the best of it.

1149. That leads to what I want to say. You urged the extension of grounds of divorce, and to some extent the extension of facilities of recourse to the courts, on the ground of its effect on public morality. But might not it equally be said that the effect of public morality in the wider sense—the sense, not of commission of actual transgression, but of the whole basis on which the moral life of the people rests, would be affected by that extension?—I do not think so.

1150. I should like to be clear. I think you said that you thought the present facilities for divorce had greatly weakened the binding force of the marriage tie?—Yes.

1151. You also feel that the present position of divorce involves a number of persons in the commission of irregular acts?—I think you mis-heard me. Not divorce—separation.

1152. You would not extend that to divorce?—No; it is the separation that is the cause of immorality.

1153. Then you do not think the fact that at present persons are not able to get divorce on the various grounds you have alluded to—cruelty and desertion, and so on, tends to morality?—May I put exactly what I mean in my own words?

1154. Please?—I think that these separation orders result in people living apart and gradually living with somebody else. That is separation. If they were divorced they would not live with somebody else but they would marry and live moral lives. That is one distinction. Apart from that, I think the divorce laws have made the idea of the marriage tie less strong and valuable than it ought to have been; they marry too soon; they marry without care; and they marry under the feeling that they can get rid of it. Now, that is quite a different thing from the effect of separation. But what I want to convey is this; that there are a great many cases where, by reason of the present state of the law, you can only grant separations, and you ought to make it divorce, so that they may marry. That is the meaning of the extensions; you get rid of the separations by extending the remedy.

1155. It would not tend to balance the effect on public morality, generally?—I do not think so. It would be hopeless if you gave relief to the guilty as well as to the innocent. You must limit your relief to the innocent. There has been a suggestion that if both are guilty of immorality you should give a divorce. I think that would be fatal to morality. I think you must give it only as a method of relief to the innocent person, and that will hold up the divorce laws, not as an immoral procedure, but as one of high morality which will give relief to the innocent party.

1156. But you still think the giving of this relief, under whatever safeguard, does act and has acted in a way that has greatly loosened the binding force of the marriage tie?—I think if you could go back 57 years, or 53 years—whatever it is, to the time when the Divorce Acts were first started, and begin again, I would say at once, "Do not have divorce"; and then the people would know that they had to live together for better for worse, and there would be an end of any difficulty; but when once you have admitted divorce you cannot rescind it; you have to take it as it is, and make it better if you can for the purpose of getting rid of that which tends to immorality, and get that in its place which tends to morality.

1157. I omitted to ask one question, Mr. Justice Deane. I should like to know, in the experience of your court, are those who come either *in formâ pauperis* or obviously with not large means—are any large proportion of them artisans, or do they mainly belong to the lower middle class?—It is a lower class than artisans who come *in formâ pauperis*.

1158. Do you have any large number of artisans who come before you—themselves or their wives?—It is difficult to know exactly what an artisan is; but what I call an artizan I should say was one of the smaller class that come before us. I should have said the bulk of our people were the very poor and the moderately rich.

1159. (*Chairman.*) There are a few questions I want to put to sum up some of the questions that have been put to you, and which have suggested questions which I think are worth while putting. First of all, with regard to drink, I think you said—quoting something as a matter of fact that I have already said—that if the evil of drink were reduced it would largely reduce divorce?—I think so.

(*Sir Lewis Dibdin.*) It was Sir John said it this morning.

1160. (*Chairman.*) Well, he quoted what I have said. You find that dissolute habits on both sides are brought about largely by drink?—I suppose that is so; not necessarily by drinking to excess. I do not think I would go so far as that. By not drinking to excess I mean not getting drunk, but getting excited.

1161. Bringing about bad associations?—Getting themselves out of themselves, if I may use that expression.

1162. Have you drawn any conclusion at all from the statistics we have had that the majority of the divorce cases occur after a considerable period of marriage. Have you drawn any conclusion from that fact disclosed in the statistics?—Yes, I think so.

1163. What conclusion have you drawn?—It is difficult to come to any real conclusion about it. I may say this: I believe that one of the reasons which lead to divorce is the absence of children. I took up one of my note books yesterday casually; it was for the year 1908, and it began on the 11th May and I took it to the end of the year. I tried 187 undefended cases between those months. In 87 of them there were no children; in 43 there was one child; in 35 two children; in 12 three children; in 2 four children; in 2 five; and in 2 six. That was the total. My impression is that it is a very serious question—this absence of children—to the married life, and I believe you will find (I am certain it is so from my experience this term) that if there are children it keeps the home together and they both work together. When there are no children the home is not the home that it ought to be, and that is the real reason I think that keeps the people apart and prevents them living a domestic life.

1164. That would hardly account for the great majority of cases taking place, say, ten years after marriage. The sort of idea that has been put before us is that at that time the greatest strain in life comes on these poorer classes and they try to counteract it by drink and other causes?—I do not think you can take it by so many years after marriage. I know a great many cases (I have just given some small statistics about children)—I have known a great many cases where people live very happily together till the time comes for their children to be educated, and then they fall out over that and get to impossible conditions.

1165. It is the fact, however, that amongst the moderately poor—those earning 25*s.* or 30*s.* a week—that at about that time the strain of life by the children coming on and causing more expense is felt more?—Yes, and more so every year by reason of the fact that people are prevented letting their children earn money. I do not say it is not right, but that does have an effect.

1166. Does not it show that it causes more friction, and then the parents try to get out of it?—Yes, to get away from it.

1167. And then fall into bad habits?—Yes.

1168. Now the Archbishop put to you the serious result that might follow from adding as a cause of divorce a certain number of years crime-sentence. Do you think or not that that fact would help to tend to check the commission of crime?—I do not know. I think it cuts both ways. I think some men are brutes enough to say, "What a good thing; I get that at all "events; in addition to my punishment I get rid of "that woman." Whereas other men might feel it bitterly.

1169. Notwithstanding the suggestion made, I understand you to adhere to the view that for a long sentence of imprisonment there should be relief?—I think so. A woman is very often left absolutely penniless. What is she to do for five years.

1170. Do you think in the class of cases where you get the criminal element, and the children left without anything, that she seeks to find some other solace and gets into a state of immorality?—The difficulty is (it is no use blinking the fact) unfortunately immorality is a source of livelihood; that is the trouble; and some women are reduced to it at the last moment—the most moral women (you have known it in cases we have had) have been left in such a state of utter destitution that from sheer starvation they have given way.

1171. The bottom of the principle, as I gather from your earlier evidence, is that with five years' imprisonment, or perhaps more, life together has become impossible?—That is the principle.

1172. One or two points that occur to me about the suggestion of judges going round. I take it you and Sir John Bigham are pretty full up at present?—Well, I do not know; we have a supplemental list going.

1173. But your time throughout the year as two judges is fairly well occupied?—Yes, I suppose it is, fairly well.

1174. Do you think it would be possible for two judges to dispose of the Probate, Divorce, and Admiralty business here, and yet go round the country with a possibly largely increased number of cases?—We have had a series of heavy terms of Admiralty work; more than usual. Up till then the second judge has always been able to help on the Probate and Divorce side, and we have kept up to our list, and it is only lately we have not been able to do that; but it may be it may mean a third judge.

1175. That is what I was coming to. Your view is if it was carried out it could be acted upon by having a third judge?—Yes, and he could perhaps help the King's Bench Division if he was not wanted in ours.

1176. Do you think it would meet the difficulty of those small local cases if they were only taken once in every six months at these centres?—I think so.

1177. The judge going round the country would have a large area to cover, and he could not go round except at long intervals, and the difficulty is in these matrimonial cases they ought to be disposed of at once, you cannot wait so long. I should like to know what you think about that, because I understood Judge Tindal Atkinson put the length of time that would elapse between the circuits?—Well, I have thought about it, but I thought six months was not a very long time.

1178. They have got to get their papers done?—I do not suppose it would be six months except in extreme cases.

1179. I think, according to my recollection, a great number of undefended cases in London are taken within a month or so of the time the case was started?—Only the supplemental cases.

1180. The others two months?—The others two or three months. Take this term's list. This term's list began to be set down in October, and we began to try them in January.

1181. Whatever the exact details are, it is desirable that these cases should be disposed of quickly?—Yes.

1182. One other point on that. The suggestion, as I understand, is that the registrar of the district registries might dispose of the interlocutory proceedings?—I should discourage interlocutory proceedings by making stringent rules about pleadings.

1183. But any appeal would have to go to the judge?—Yes, if there are appeals they must be made in London, or to the judge when he comes round.

1184. One other difficulty that I think rather bears upon the establishment of local tribunals. Do you find by experience that these people in the other class of life have difficulties with their witnesses because the witnesses are all earning money in employment and find a difficulty in getting away?—I have no doubt that is one of the difficulties; getting them together. They have to give notice and get leave to be away.

1185. Then with regard to the proceedings in the district registries as compared with the county courts. The county courts have power of service of proceedings through their bailiffs?—Yes.

1186. One of the great difficulties in the divorce business is serving the other side, especially if they have disappeared from the locality. Do you think the registrars of the High Court, who have no bailiffs, could dispose of that sort of work as well as the county courts?—Well, I do not know. You see solicitors' clerks serve everywhere.

1187. We are speaking of the class of cases where they want to work as economically as possible?—A solicitor's clerk would not charge very much, would he? 3*s.* 4*d.* I suppose. That would be a scale of fees that would have to be settled, I think.

1188. I only mention it because you know it has been before us on some other occasions as one of the things a county court can do, and the High Court cannot.

(*Judge Tindal Atkinson.*) The proceedings are served by the county court official without any expense to the parties.

(*Chairman.*) That might apply to the high court, I should think.

(*Witness.*) I think you would have to ascertain the court fees in these poor cases, and you might deal with it in that way.

1189. One other matter about the magistrates. A good deal has been put to you in various quarters about want of uniformity of decision, possibly among the magistrates and county court judges if you had them. Have you any idea how many magistrates there are all together?—In the country?

1190. Yes?—Not the least.

1191. It is the magistrates at petty sessions who take these cases mostly?—Yes.

1192. Most of them are not trained lawyers?—No; hardly any of them.

1193. That may account for a good deal of diversity of opinion amongst the magistrates. Would that apply to the county court judges?—I should like to point out this matter for consideration. There is one judge of the High Court who is a very high churchman and who has persistently refused to have anything to do with divorce cases, and once when he was vacation judge he refused to make decrees absolute; and there may be county court judges of that opinion, and they might be in some populous district, and that difficulty would arise. Then his Grace suggested there were some very high church people about the country who might object to divorces altogether. There may be some of these county court judges who object to divorce altogether. Therefore, I think you ought to keep it in certain well known hands. I say hands, but I mean heads.

1194. One point on this want of uniformity. The magistrates' work is all discretionary; they are not bound to make these Orders?—No.

1195. But if these rights are given to the county courts it would not be discretionary, but all fact; proof of adultery and desertion and so on?—Yes.

1196. The only case where discretion comes in, is with regard to a guilty person?—Yes, that is the present law.

1197. Well, there is no possibility of want of uniformity between the county court judges except in so far as they find fact?—Well, we call it discretion, but it is a mental attitude towards the facts. It is more a mental attitude of the man towards the facts that you have the diversity in than the discretion.

1198. It is not want of uniformity in applying the law to the facts, but getting at the facts?—Yes, approaching it from the same point of view.

1199. (*Judge Tindal Atkinson.*) That applies to workmen's compensation cases, say?—Yes, to everything in life.

1200. Well, you would not remove from the county courts jurisdiction in compensation cases?—No; but I look upon this divorce question as one of the most delicate questions of our jurisprudence.

1201. (*Chairman.*) Would you see any material mitigation of your view if the jurisdiction were conferred on certain county courts, as it is in the bankruptcy cases? In the bankruptcy cases there is extended by the Lord Chancellor an order that it should be taken by county court judges. Would you see any difficulty in that applying to this branch of the business?—Only the same objection that I have made throughout, that I think the fewer persons that have to administer this jurisprudence the better.

1202. That might be, but a county court judge for two or three districts might take the cases for that combined district?—If one county court judge would act as judge of assizes for certain places the objection is not the same.

1203. It does not follow that every county court judge need do this. It might be that half a dozen throughout the whole country would be selected and do the whole district?—Well, half a dozen selected judges I should not object to so much, but I should prefer fewer.

(*Sir Lewis Dibdin.*) You lose the advantage of facility of access then.

(*Chairman.*) No, not if they travel round.

(*Witness.*) The judge himself said: "Suppose we "group Norfolk, Suffolk, and Essex, one judge might "take the whole of those three counties." If it is reduced in that way——

1204. If it is reduced to a few a great part of your objection would go?—If you could reduce it to a very small number I should not object. I may say, in putting forward this suggestion that one of our judges should go away to do this work, I have spoken perfectly unselfishly. I should hate it.

1205. (*Sir Lewis Dibdin.*) If you had only one county court judge, and he was going over several districts that would involve one county court judge going to the district of another county court judge, would it not?—Yes; but he would not be called county court judge for that purpose, I suppose. That would be got over; he would be called local divorce judge or something.

1206. (*Chairman.*) I am only putting these suggestions because there seems to be a general opinion, as far as we have got, that local trials of some sort might be desirable. There are various ways of dealing with the difficulty. Now to pass to two other points. The first is collusion. You have mentioned the probability of collusion existing in a variety of cases, and that that might be extended to more cases, as the Archbishop said, if you gave greater facilities by trying in the country. Has it occurred to you why there should be any collusion at all in these suits; why this stigma of collusion should apply to divorce cases and to no others?—I think there would be much less collusion if you altered the law as I suggested.

1207. But why do you find there should be any collusion at all?—It stands to reason it is to present a false case to the court.

1208. But why should it be necessary in the administration of justice in a proper state of the law that people should be afraid of stating their cases correctly?—I am afraid I do not quite follow.

1209. Why should people collude at all? Is it because the law is too hard for them or not? There is no other class of case one knows of in which it does not pay honestly to disclose the position of the case. Surely there must be some foundation for this collusion?—It is always introduced, I think, where both parties have been guilty of something.

1210. Then that means that the law is such that collusion, if it extensively exists, exists to defeat the law when they think it does not meet the justice of the case?—Yes. Let me give an instance of what I mean. There was a case some years ago of a man who brought a suit against his wife on the ground of her misconduct with the co-respondent. She retaliated by accusing him of adultery. The case lasted a couple of days, and on the night of the second day the two solicitors happened to be staying at the same hotel, and they put their heads together and they agreed the wife should not prosecute her case against her husband, and that she should let the case against herself go by default. Well, that was a case of collusion, and the King's Proctor intervened and showed this agreement, and in the result there was a trial by the King's Proctor alleging adultery, and they were not able to prove it, but I think there was no doubt that there had been adultery. Still, there was the collusion—withholding the true facts and presenting an untrue case—because if both were guilty of misconduct there would be no relief for either.

1211. It is because people want to keep back from the court that which would defeat a decree?—Yes, I think so.

1212. Does that lead you to suppose that the law is in a satisfactory state?—Yes, because I think those people should not have any relief at all.

1213. Your view is that recrimination is right?—Yes.

1214. Might I ask you if you think that is right in the interests of the two married people?—I do not think the law was ever meant to benefit two people who were both guilty.

1215. That is so at present, but what advantage is it to the two parties to leave them tied together?—None.

1216. What advantage is it to the State?—Only the discouragement of immorality; you would get a benefit by being immoral.

1217. Do you think it would tend to encourage morality?—Yes, I think it is a deterrent if they know there is no relief.

1218. But if there are numerous suits in which collusion exists ——?—Because they are not found out. If they were more often found out you would find there would be much less collusion.

1219. We will hear how the Scotch deal with this. I only want to put these questions because the probability is we shall have evidence from Scotland.

(*Lord Guthrie.*) Would you ask if, apart from recrimination, there is any extensive collusion at all?

(*Witness.*) I do not think so.

(*Lord Guthrie.*) Well, that tallies with the Scotch experience.

(*Witness.*) I think all the collusion is to stop recriminination.

1220. (*Chairman.*) Do you think it is a great advantage to a country that its law should be in a state in which people disobey it and conceal their disobedience, or whether it should be brought into line with other laws of other countries which do not produce these judicial difficulties, even though it might risk the question of whether morality was effected?—I am afraid I can hardly answer that.

1221. Do you allow it is a serious thing a tribunal should be listening to a case in which it knows or suspects there is a large amount of collusion?—I am not sure that we have not been using the word collusion in too loose a sense. The sort of collusion I mean is not strictly collusion, but it is keeping back from the court facts that are known to both sides. That is to say, a man brings a suit against his wife on the ground of her misconduct with A. She knows perfectly well that her husband has been guilty of misconduct too, but does not bring it forward.

1222. I was not thinking of agreed collusion, but keeping back from the court facts which, if known, would prevent it?—Known to both of them, but they did not agree to keep it back. She keeps it back without any agreement. That is collusion in a sense, because he knows perfectly well, and it is possible she and he have talked it over, and she has promised not to bring it forward, but there is no evidence of it.

1223. It seems to me to be a choice of evils then. Either you have the tribunal which both the parties are habitually deceiving and the court acting on a rotten foundation—which must act on people at large—or the question whether it is not, in that state of things, better that all the facts should be disclosed without having regard to the consequences?—That is what I suggested just now; that the Act of Parliament which says parties should not be liable to be asked should be rescinded, and make it necessary for a man to state on oath that he has not committed adultery.

1224. Yes, but he would lose his decree?—No, he would not file his petition.

1225. I ask this because the French have taken the view that in the interests of the State it makes it more desirable if both parties are guilty than if one is?—I do not think so. I think it is in the interests of the State to make the marriage tie as high and honourable as possible, and not make it easily dissoluble, except for the relief of the innocent.

(*Chairman.*) If the law is in accordance with what people think is right, and it is not broken by the sanction of public opinion; but if this is prevalent people do not hesitate, because they think they are doing nothing particularly wrong if they defraud and deceive the court. Just like the old smuggling days when people delighted to smuggle because they thought the law was too hard.

(*Sir Lewis Dibdin.*) But is not it rather a question as to whether it is good for each party to commit an immoral act and then get a divorce?

1226. (*Chairman.*) But I want to ask Mr. Justice Deane if he has considered the disadvantage of the court being dealt with as it is now as compared with a change in the law that might mitigate that?—I have no

doubt in my own opinion. It should be made known that the law of divorce is only for the innocent party, and that the guilty party should get no relief.

1227. You think it is an advantage to the parties to the marriage?—Yes.

1228. And to the State?—And to the State.

1229. Then one other point. You said that in your view the fact that the Divorce Act had been passed, even though it has limited causes for decrees, has not tended to improve morality, but rather to diminish it?—Yes.

1230. Have you studied the state of society prior to the 1857 Act as recorded in numerous works?—I cannot say I have.

1231. You do not think the state of the morals of the country and society is as good now as it was in 1857?—I do not believe the tone is so high.

1232. You take that view?—I do not believe the tone of morality in this country is as high now as it was 50 years ago.

(*Chairman.*) I am sure we are all very grateful to you, Mr. Justice Deane, for your evidence.

Adjourned until Monday morning at 10.30.

Winchester House, St. James's Square, London, S.W.

THIRD DAY.

Monday, 28th February 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Hon. Sir JOHN BIGHAM re-called and further examined.

1233. (*Lady Frances Balfour.*) I should like to ask a few questions, if I may. Did I understand that the chief objection to removing these cases from the High Court to the county courts was the difficulty of defining cruelty?—Oh, no; my chief objection is that you would have a very large number of standards of judgment, and that it is not desirable to have that. Secondly, I think that the question of a man's or a woman's status is so important that it ought only to be dealt with by the highest tribunal. The difficulty of defining cruelty exists wherever you go.

1234. If it were more defined than it is now by the law, would not that simplify it a good deal? I think you spoke of the different views that both the judges and the juries took of cruelty?—No, what I meant to convey was this. There is a definition of cruelty to be found in the authorities, and it is what I call a very narrow definition; that is to say the cruelty must be of a very serious nature in order to justify the interference of the court. Juries pay no attention to that definition, and if their sympathies are aroused they do not find their verdict in accordance with the evidence and the law, but they find their verdict in accordance with their sympathies. The definition of cruelty laid down by the authorities—I think it will be found in a case which was before the House of Lords, a case in which Lord Herschell gave a judgment ——

(*Chairman.*) Russell *v.* Russell.

(*Witness.*) A definition is to be found there, but the definition does not help much because each case depends on its own circumstances, and each mind before which the case comes has to decide whether the case comes within the definition or not. The definition is, in my opinion, as precise now as it can be. The difficulty is in deciding whether the circumstances of the case come within the definition, and I do not think you can remove that difficulty by altering or amending the definition.

1235. (*Lady Frances Balfour.*) Then if the necessity of proving cruelty were removed altogether it would not remove your objection to the cases going to the county courts?—No.

1236. There was the case you gave of the intimacy of a husband with a domestic servant?—Yes.

1237. Would that be cruelty if it was not continuous?—I do not regard that as cruelty. In a sense it is cruelty, and in a sense it is cruelty of a very serious kind, in my opinion; but it is not regarded as cruelty in the definition I have spoken of. Cruelty consists of some sort of conduct which affects the bodily safety of the wife, we will say, and her bodily health.

1238. Then do you mean that anything that affects the mental condition, or the dignity, is not cruelty?—I am only dealing with what the definition of cruelty is.

1239. Then we understand it must be purely bodily cruelty in the eye of the law?—Yes; but you can have mental cruelty, which produces bodily breakdown, and that might be cruelty.

1240. Then if I may ask one more question—about the wise wife. That was the expression you used?—Oh, I hope you will not pay too much attention to that. That was an observation of mine by the way.

1241. But I suppose it conveys the attitude of mind which you think it right to observe. The wisdom is in the woman regarding the man as the weaker vessel, and having less self-control than she herself is supposed to have. That, I suppose, is the position, is it?—I do not think so. But if you wish it I will withdraw that observation I made.

1242. I only wanted to get at where the wisdom exactly lay?—I consider that a man is subject to many more temptations than a woman.

1243. That is, of course, your own personal view?—Yes; I do not want to apply it to myself at all; but at the same time it is what I mean. I think a man is subject to accidental and frequent temptations that a woman is not subject to, and I doubt whether a woman would yield as easily to such temptations even

if she were subjected to them. I doubt it very much. A man's nature is, in that respect, I think, different from a woman's.

1244. Then the interests of general morality, or of her own happiness, would you say, consists in the wisdom of not observing these things. If it was in the interests of general morality, I should say it would apply equally to the husband?—Well, possibly; that is a matter of opinion.

(*Lady Frances Balfour.*) Her price would be above rubies, I presume, to him.

1245. (*Mrs. Tennant.*) I want to know, if I may, as to how far you would be prepared to go in modifying the grounds of divorce. Speaking generally you would leave them as they are?—Speaking generally, I would leave them as they are, unless I wiped them out altogether. But I mean to say I am thinking of the extension of them, and I am not dealing with the other side of the question—the obliteration of them. But as far as extending them goes, my inclination is not to extend them. I do not, personally, much like divorce.

1246. What is in my mind is this: Whether you would be prepared to modify the present grounds of divorce for the wife as against the husband in this respect. You say that where the adultery is continuous, and committed in circumstances of open indignity to the wife, you think that then she might have ground for divorce, without the addition of cruelty or desertion?—Undoubtedly.

1247. Would you be prepared to let those terms form part of the statute?—Oh, yes, I have said so, because I think it would be an improvement.

1248. For example, you would perhaps put them in this order; continuous adultery or adultery committed in circumstances of open indignity to the wife, or adultery aggravated by desertion or cruelty?—Yes, you have put it exactly as I should wish to.

1249. One matter has especially interested me; I wonder if you would be good enough to throw light on it: the breach of the marriage contract is not met by punishment under the law. It is the only example of a legal contract the breach of which is not met by punishment?—Well it depends on what you mean by punishment. I draw a distinction between a contract and a duty. An ordinary civil contract is only punished at law by giving to the person who has been wronged by the breach of the contract a right of action, and the right of action is followed by certain relief, either damages, or possibly a relief by an injunction, or what not; but it is never followed by imprisonment or fine, or anything of that kind. Imprisonment or fine are the punishments for the infringement of the criminal law.

1250. Is not the breach of contract by employers punishable?—Yes, there are exceptional statutory punishments of that kind that have been introduced. What you are thinking of, I think, is the punishment of labouring men who break their contracts and who are in such a position that they are unable to pay damages. It is the only way of punishing them.

1251. That is one of the cases in my mind; but also, I am thinking of an employer who breaks a contract of apprenticeship, and does not fulfil the terms of the apprenticeship; he is punishable too, is he not?—He may be, but I have been a very long time on the bench and I have never had such a case before me; but I have no doubt there are such cases.

1252. You think it is right and proper that our courts should not have taken over any form of punishment from the ecclesiastical courts? The ecclesiastical courts did punish?—I do not know what the ecclesiastical courts did. Did they send people to prison?

1253. (*Chairman.*) There were cases, I think?—They withheld from him spiritual comforts.

(*Sir Lewis Dibdin.*) Excommunication is the old correlative of imprisonment for contempt now.

(*Chairman.*) Punishment was recommended by the reformation, but that was never adopted.

1253*a*. (*Mrs. Tennant.*) You do not think it desirable that there should be any form of punishment by law?—No, I think not. I have never heard it suggested, and I have never thought about it, but, speaking on the spur of the moment, I should think it extremely undesirable.

1254. (*Lord Guthrie.*) You said you doubted whether the existence of divorce does more harm than good?—Yes.

1255. Would you apply that to any form of permanent separation whether a *vinculo* or a *mensa et toro*?—Let me realise what the question means. I would not oblige a woman to live with a man if I were convinced that she was living with him in danger of her life; nor would I compel a woman to live with a man if I were convinced that her life was so degrading and so degraded as to make it morally improper that she should live with him. When I say I do not like divorce you must understand that I make an exception of cases of that kind.

1256. Then you would treat adultery as not merely a moral wrong but a legal wrong, giving some form of relief?—Clearly. I regard it as a legal wrong; I regard it as a breach of the civil contract of marriage.

1257. If you give relief in the form of permanent separation, with corresponding provision for the children, and for maintenance, do not you in that way conduce to what we all desire to avoid—the break-up of the family, not to the same extent, but to a very large extent, just as in permanent divorce?—You must not understand that I wish to advocate the repeal of the divorce laws; I know that that is out of the question altogether, and I am addressing my evidence, and I have addressed my mind, only to the question that this Commission, as I understand, is dealing with, the question, for instance, of extending the present law of divorce in the direction of more divorces. I have not thought sufficiently about the legal question of whether the divorce law is a good one or not. My feeling is that I do not like it but I am not prepared to justify my feeling.

1257*a*. Does that go further than this, Sir John—which we are all agreed in—that the desirable condition of matters would be to have neither divorce nor separation. That, of course, is common ground?—If we could do without them, certainly.

1258. But do you go further than that, and do you consider that your view is anything more than a counsel of perfection under existing conditions?—You will go back to what I say I do not want to deal with. My counsel is a counsel of perfection in a way.

1259. Of course we all attach immense importance to your opinion, and we are anxious to get it on the root matter of law?—I said on Saturday, I think, there is at all events one country—Ireland—to which our divorce laws does not extend. It does not extend to Scotland either, but then Scotland has a very satisfactory substitute for our law, apparently; but Ireland has none, and Ireland works under the old law, I understand, that existed before 1857, and I am by no means sure that Ireland is not as well off as we are.

1260. That is very important, Sir John. You see we have had suggested to us this view, that permanent separation, which can be obtained in Ireland, produces worse effect on the spouse, on the children, and on the State, than a reasonable allowance of permanent divorces?—Well, if I found that that was the case I might modify my views, but I do not know that it is the case. Might I, Lord Guthrie, in this connection, make an observation which I think I ought to have made when the Archbishop was asking me some questions? It is this: that I think that religion has a very great effect in restraining applications for divorce; and I say so for this reason, that my experience shows me that members of the Roman Catholic Church seldom come to our court, and I attribute that fact to the great influence that their priesthood have over their congregations, and to the respect—I do not trouble myself about the word sacrament—which is inculcated in a Roman Catholic for the marriage vow.

1261. But is not that fact, which is quite in accordance with my much smaller experience than yours, due to the fact that if a Roman Catholic did so he would have to leave the Church?—I do not know; but I believe if he obtains a divorce in the civil court and continues to have relations with some other woman than his wife, he remains in the eyes of the Church an adulterer.

1262. Quite so. Might I ask, in your experience, whether there is not, apart from any religious question,

or any general question of public policy, a large number of cases that come before you where you feel that, in the interests of the spouses, and in the interests of the children, it is very desirable that there should be permanent divorce?—No doubt there are cases of that kind.

1263. Would you say a large number of cases?—That I do not know, because I never know what the definition of "large" is.

1264. Well, there are cases—a substantial number?—Yes, undoubtedly there is a substantial number of such cases.

1265. With regard to equality; do you approve of the exceptions in the 1857 Act to the rule that a woman shall not on adultery alone have the right for divorce?—I think I do. I remember those exceptions, and they are no doubt in your mind. I do not want to refer to them; but I do.

1266. And to these, I understand, you add the additional exception of long and continuous adultery?—Of continuous adultery—yes.

1267. I did not mean long, but open and continuous adultery?—Oh, yes.

1268. There are five exceptions in the Act; that makes six. Do you also add another one, namely, where the adultery involves gross indignity to the wife?—Yes, I do.

1269. Would that cover such a case as this: a man convicted in connection with a young girl under 16, where there is consent under the Criminal Law Amendment Act?—That is a case I should like to consider, and I should like to know the circumstances under which the offence was committed.

1270. But that would be a case, would it not, where the court should have power in appropriate circumstances?—Undoubtedly.

1271. Now if that results in a rule to which there are seven exceptions, and if it be in many cases a question of indignity, which is more a subjective thing than an objective, would not it be much better to sweep away that rule altogether, and sweep away the question of inequality, and leave the wife to judge in what cases she had suffered such an indignity?—I do not think so.

1272. Would you say why?—Well, because I do not want to see the marriage tie easily broken or destroyed. I do not want to see it upon the mere ground—as would be the case in the case you suppose—that the husband has made one of those—what I call accidental—slips in his morality, which would in my opinion not be nearly sufficient to justify so drastic a remedy as the breaking of the marriage tie.

1273. And a properly conceived clause bringing in the elements of indignity, would, you think, cover the case, leaving the question then for the judge?—I think so.

1274. With regard to collusion, Sir John, are the cases where you see or suspect collusion chiefly in regard to the doctrine of recrimination; with cases of recrimination chiefly?—Well I have scarcely given sufficient attention to that to answer the question. I should rather not answer.

1275. Is it the fact that the existence of the King's Proctor is chiefly necessitated by that?—I think so.

1276. What is your view as between the English system of taking a considerable proportion of cases with juries, and the Scotch system of taking them all before a judge?—I infinitely prefer the Scotch system, but I know very eminent men in this country who would differ from me. I think more injustice is done by juries than people know.

1277. Would you indicate the grounds on which those views are founded?—I would if I were not speaking in public give you the names, but I cannot do it. I could give you the names of very eminent men, indeed, in the State, who take the view that the English jury is a tribunal through which nearly all disputes of facts ought to be taken.

1278. (*The Earl of Derby.*) I did not hear the last words?—I say there are men in the State—men whom we all know well and whom we all respect—who take the view that the tribunal of the English jury on questions of fact is the best tribunal that can be obtained. I do not think that that is, speaking generally, true. I did not know that in Scotland these cases were tried exclusively before judges, but I am quite satisfied that it is a better system, if that is so, as Lord Guthrie tells me, than our system of trying before juries.

1279. (*Lord Guthrie.*) Our view is that these are typical cases that ought not to go to juries?—Exactly. The feelings of juries are influenced by all sort of considerations, which in the opinion of a lawyer, ought not to influence them at all. An illustration of that is to be found in the case where a wife sues on the ground of adultery coupled either with cruelty or desertion. The jury, if they think adultery clearly proved, make very short work of the cruelty and desertion. They pay no attention whatever to what the judge says to them on the question of cruelty.

1280. Does not that throw a light on the matter? Is it not in accordance with your experience that they seem to act on the view that adultery is quite enough in the case of the wife?—I do not know. Their feelings are always in favour of the lady—always.

1281. I should have said in the case of the wife being the petitioner?—Yes.

1282. We have no power in the case of the guilty wife to order her husband on divorce to make an allowance. Most of the judges think we should have such a power. You have it in England. What is your view on it? Is it a right thing or not?—To allow the wife ——

1283. To give the court power to compel the husband to make her an allowance?—Do you mean where she is the party in fault?

1284. Yes?—I think it is a desirable thing. Although, as a rule, I should not give a guilty wife support at the expense of her wronged husband, I think it is a wise thing that the court should have power to direct that some maintenance should be given to the guilty wife.

1285. *Dum casta* only?—Well, I do not know.

1286. (*Chairman.*) May I remind Sir John on this point that the court has power to suspend a decree until the husband, who is the petitioner, secures an allowance to the wife? That is exercised largely with the view of giving the wife an opportunity, if the husband can afford it, of having sufficient to keep her in respectability?—Yes, that is so; and as a rule the order is made *dum casta* and *dum sola.*

1287. (*Lord Guthrie.*) Your view is that the law should allow that to be done which a properly constituted and right-thinking husband would voluntarily do?—Yes, and it very often happens that a wronged husband voluntarily allows to the wife some support. He does it for his own sake, and very likely, if he has children, he does it for the credit of the children.

1288. One other question; with regard to what we said about the court having power to prohibit marriage between the guilty spouse and the paramour. Suppose that were the law—and one can see that there is a great deal to be said for it—would it prevent marriage?—You tell me in Scotland it is very seldom or never exercised; but if exercised it would prevent a marriage which you think an objectionable marriage. In my eyes (we are getting on the question of morals again) the incriminated parties who get married after divorce are continuing to live in adultery. I do not like it.

1289. You say your view. Is that based on scriptural ground?—Oh, dear me, no. I have not regarded this matter from a scriptural point of view at all; I am not in a position to do it. I do not know sufficient of the subject to do so.

1290. It is on the ground of public policy?—Yes.

1291. And partly because it puts a premium on adultery?—Yes. I think it is objectionable to allow the incriminating parties to be married; and I do not consider that morally they are in the least better position after the so-called marriage than they were before.

1292. What I mean is this: if the decree is entered on a marriage register, would it in fact prevent a marriage being gone through, with a result that the real injury in the end would be to the innocent children who would be illegitimate?—Well, that is, I agree, a

very important matter to consider, and one that ought possibly, even from my own point of view, to modify what I have said.

1293. (*Sir Lewis Dibdin.*) I only have very few questions to ask you. With regard to the last question Lord Guthrie has put to you; the difficulty of persons who cannot legally marry yet succeeding in going through the ceremony of marriage, is a difficulty that arises in other contexts as well as this, is it not? I mean relationship, for instance. There are incestuous marriages?—Yes.

1294. That is to say; ceremonies of marriage gone through by persons who, concealing their relationship, have succeeded in getting a ceremony celebrated?—Yes.

1295. And I suppose the difficulty that has been put to you is a difficulty of that kind, neither more or less?—Well, it is a difficulty much of the same class.

1296. When you say your feeling is one of doubt as to the general wisdom of the divorce laws, that, I suppose, is quite consistent, is it not, with your view also that in cases it may be very good for the parties that the divorce should be granted?—Yes.

1297. One is a general point of view?—Undoubtedly.

1298. And the other is a particular point of view?—Undoubtedly.

1299. I did not quite follow your evidence on Saturday—what your view was as to the alteration that was necessary with reference to desertion. I did not gather whether your view was that desertion alone should be a ground for divorce?—Well, I will repeat what I intended to say, or what I think I said; or I will at all events say what I mean. I said that where a man (I will take the case of the man) leaves the wife and remains away from her for a long time in such circumstances as to make it clear that he never intends to come back and perform the duties of a husband towards her, that in those cases it should be competent, at all events for a young wife, to obtain a divorce.

1300. That is what I gathered, but that is rather a question of the proof of desertion?—Of course. Your Chairman instanced a class of case which we are very familiar with, where a husband vanishes—perhaps goes to America, and no one knows where he is; he never writes; he cannot be found; he sends no money, and he leaves his wife to shift for herself as best she can.

1301. After a certain number of years, in a case like that, there is a presumption that he is dead?—Oh, if you are thinking of bigamous marriages, yes. If a woman marries after her husband has been absent in such circumstances for seven years, she will not be punished, though he turns up afterwards.

1302. (*Chairman.*) The tie of marriage still remains, though there is no punishment?—The tie of marriage remains, but the punishment is not inflicted.

1303. (*Sir Lewis Dibdin.*) Quite. What I gather you are suggesting is an extension of that law to the existence of the marriage?—Yes, that is what I mean. When I say a divorce, I mean that the marriage should be dissolved.

1304. Beyond that I take it your view is rather with reference to the abolition of the hard-and-fast rules as to two years' absence, or the necessity of getting a decree of restitution?—Yes.

1305. But to leave it to the court in every case to say whether what has happened is desertion?—Is desertion within my meaning; that is to say, in such circumstances as to convince the court there is no chance of the husband coming back.

1306. Now, I wanted to ask you your view as to a divorce in the case of criminal sentences. What strikes one about that is, if you make a sentence of five years' penal servitude ——?—But I would not.

1307. You would make it longer than that?—I do not know about longer or shorter. I certainly should not have any fixed limit at all. It would depend upon circumstances. First of all, take the case of a wife whose husband has been convicted of some serious crime. If the wife is already a middle-aged woman, that is to say, if the young married life is past, I would not make the circumstance that the man is sent to prison for a long time be a ground for divorce at all.

1308. That I follow; but I will take the case of young married people, and I gather your view would be, not that it should be a necessary thing to give a wife a right to divorce, but it would be a ground on which she could come to the court and ask for a divorce?—Certainly.

1309. Putting it on that mitigated basis, what I suggest is, are you not adding a hopelessness to the man's position, which it is questionable ought to exist?—That is why I said, on Saturday, that I looked upon it with some apprehension, because I think it would be a dreadful thing for a man who had fallen into crime to know that there might be, in addition to the punishment that the law awards to him, the possibility of his wife being taken from him—a very dreadful thing, in my opinion. And it might be a case where, although a man has deserved, and received a long sentence—it might be a question of sudden anger or passion, not involving great moral depravity of a general kind. Not only that, but I think this: even judges are only human beings, and I think, if a judge were trying a man for a serious crime, he would hesitate about inflicting on the man a proper punishment if he knew that that proper punishment might involve his losing his wife.

1310. That is what happened in the old days of sheep-stealing, when they hanged people for it?—Yes, there is no doubt, in the old days, when punishments were very very severe, indeed, juries would not find people guilty, and judges were relieved from the necessity of passing the abominable sentences that had to be passed in those days.

1311. One question only about the county court. The object of proposing the county court or any local tribunal is for the purpose of providing an easy forum for the poor in the settlement of marriage questions?—Yes.

1312. On the ground that there ought not to be one law for the poor and another law for the rich?—I protest against that statement you know. There is not one law for the poor and another for the rich. There is one law for both. Unfortunately, the circumstances of the poor very frequently prevent them from availing themselves of the law.

1313. Would not the plan of county courts accentuate that; because for the rich in London you would have the High Court judge with the arrangements on the high plane, and for the poor you would have the county courts with arrangements on that basis?—That may be so; but I do not, in the presence of a very eminent county court judge, like to say it.

1314. But I mean there is a different series of arrangements?—Yes.

1315. So that the inequality would continue?—Yes, I think so.

1316. (*Judge Tindal Atkinson.*) If the Dean of Arches is right, that ought to lead to the repeal of all the County Court Acts, and that whatever the nature of a case it should be brought to the High Court?—There is something in that observation.

1317. I have only a few questions on the county court. Assuming it is right, and the Legislature should think it is right, to give facilities to the poorer classes to have their matrimonial matters decided, which they cannot now because of the expense, the question arises what is the best tribunal. Now, I understand you to say, and it is undoubtedly true, the best tribunal is the Divorce Court, in London?—I think so.

1318. That of course involves this, that the poorer classes cannot get their cases here from a distant part of the country?—Yes.

1319. Bearing that in mind, do you see any objection to the proceedings being commenced in each county court registry; that is, the petition may be filed and the citation served by the bailiffs of the courts; the pleadings would be very simple, and they should be carried on in the county court, and all the interlocutory proceedings under the control of the county court and the judge, but when the trial comes you say that trial ought to be in London?—Yes.

1320. Provided the trial is before the High Court, in London, do you see any objection to all the interlocutory proceedings being taken in each registry?—Well, at present, I do not. I have not thought about it very much, but, at present, I do not; and both you and I, judge, remember the days when all writs in civil actions and all interlocutory proceedings in civil actions took place in London. And then we had district registries made all over the kingdom in which writs could be issued and in which interlocutory proceedings in civil actions could be carried on right up to trial; then when the trial itself came the case was tried by a High Court judge at the assizes. That has worked admirably, I think, and has removed a very great grievance that had existed before; and, speaking on the spur of the moment, and without having given the subject much thought, I do not see why the preliminary proceedings beginning with the citation and going on to issue should not be conducted in the districts in which the people reside, either by means of the machinery of the county court or in some other way.

1321. Would you see any objection to the county court judge enforcing the orders of the High Court judge?—Enforcing them in what way?

1322. In this way: suppose there is an order for the custody of the children?—Yes.

1323. An order of the judge that the custody of the children should be with the wife, and the husband takes them away from the wife's custody. If the parties are resident, we will say, in Cornwall, and had very small means, there is an impossibility for those people to come to London to enforce the order. Do you see any objection to the county courts doing it?—Certainly not. If there is the impossibility of the poor wife, or the poor husband, as the case may be, obtaining relief, by reason of his poverty, from the court in London, I think he ought to be in a position of being able to go to the county court for it.

1324. Do you, further, see any objection (I know myself it is rather a denial of justice, the present restriction of the county court judge's power) to the county court judges ordering the control, custody of, and access to, children. I have a case in my mind now, in which it is absolutely essential, before any proceedings should be taken, that the children should be taken out of the custody of the father?—That may be; but cannot that be done by magistrates?

1325. No, only before a High Court judge. Where there is cruelty it can be?—You mean before any divorce proceedings are instituted?

1326. No, before the decree is made?—Oh, yes; I thought you meant before the divorce proceedings were instituted.

1327. No, suppose the proceedings commenced, and it became absolutely essential —— ?—The same observation would apply that I made with regard to your former question as to compelling the obedience of orders as to custody. I think, between the commencement of the proceedings, and the trial of the cause, the proceedings going on in the county court, the county court judge probably ought to have the powers which a High Court judge has in a similar case in his own court; that is to say, of directing that the children, in the meantime, shall be placed in the custody of the one or the other, or in the custody of some third person.

1328. Now, I should like to come down to the trial. I have disposed of the interlocutory proceedings. With reference to the trial of the case, there is no great difficulty, is there, in a divorce case?—They are mostly questions of fact.

1329. They would not be nearly so difficult to dispose of as workmen's compensation cases, and some of the bankruptcy cases that are tried in the county court. You have had some experience of bankruptcy cases?—Yes.

1330. And you know some of them are complicated?—Yes, and there is no limit to the jurisdiction.

1331. There would be less difficulty, in point of fact and in point of law, in the county court trying divorce cases than those cases I have mentioned?—Well, that is a matter of opinion, and I can see perfectly well what you are doing; you are trying to drive me into conflict with your opinion, and I have no doubt I am in conflict with your opinion.

1332. Then is it your suggestion that at the trial the judge might take the depositions of the witnesses and transfer them to the High Court?—I would very much rather have it the other way about; that the High Court, where it thinks the case is a proper one, should be able to say: "Send it to the county court." That is the converse. It will not do the other way about, that the cases should be begun in the county court and power to the county court judge to say: "I will send this to be tried in the High Court." I never heard of such a power before. I know there are a great many Acts of Parliament which enable the High Court judge to send a case to the county court, but I do not know of any Act of Parliament which enables the county court judge to send ——

1333. I did not put my question clearly. Supposing that the statute provided all the interlocutory proceedings to be in the county court, but the trial in the High Court, and that the county court should not be permitted to try without leave of the High Court; that is the case I am putting?—Yes.

1334. The question is, whether in the interests of the poorer classes it might not be as well for the county court to conduct the trials as well. I understood the chief objection you have to that is not that there is any difficulty in conducting the trials, but that there is difficulty in detecting collusion, and that you do not get uniformity of treatment in the cases?—Yes, and that the question of status is so important that it ought only to be dealt with by the highest tribunal.

1335. But if the question of status is so important, and in fact by adhering to the view you express, you prevent the poorer classes getting any relief at all, I suppose the question of status would have to go?—It would have to go by the board then.

1336. Now, with reference to collusion; I should like to draw your attention to this fact. In the returns for 1907 the number of cases put down for trial were 739. The number of cases tried in which judgment was given for the petitioner, either the husband or the wife, amounted to 598?—Out of how many?

1337. Out of 631 it is, because some of the cases did not come on for trial?—Out of the 631 tried ——

(*Mr. Brierley.*) Decrees granted in 598 cases.

1338. (*Judge Tindal Atkinson.*) Then with regard to judgments for the respondent; there were only twelve on the husband's petition and four on the wife's petition. Does not that indicate that even in the High Court not much collusion is detected?—I do not think much collusion is detected, but I think it is very desirable it should be ascertained whether there is collusion or not—or rather that an attempt should be made. You will not always be successful, but a few successful cases are to my mind very important.

1339. When you are hearing an undefended divorce what means have you of ascertaining collusion?—I will tell you. I say at once, very insufficient means. It depends upon the judge, who may notice during the evidence some circumstances that he thinks suspicious. He may then put questions himself to the witnesses, and if his suspicions appear to be well founded, or if he thinks they are well founded, then what he does, of course, is to send the case to the King's Proctor, so that he may make further inquiries; but the only means in an undefended cause of detecting collusion are by ascertaining whether there are any circumstances pointing to collusion; the only means is the judge's own examination. But you must remember this; that it is supposed to be the duty of counsel in an undefended cause to bring to the notice of the judge any circumstances of which he may be cognizant which point to collusion, a duty which I know has been admirably performed by counsel in the court. I have never found a counsel keeping back any circumstance which he thought pointed to collusion. He tells it to the court, and that is one means by which you ascertain. For instance, it not infrequently happens that a bargain is entered into between the husband and the wife, that if the wife will bring a suit for divorce the husband will help her with money or will pay her a lump sum of money if she succeeds in getting a

divorce. Well, that is collusion; the parties enter into these agreements, not thinking them wrong, though they are wrong. If counsel gets wind of such an arrangement he always brings it to the attention of the court?

1340. But many would not have that information given to them, would they?—No; but it is extraordinary (I think your Chairman will tell you this) how frequently counsel have something of that kind to bring to the attention of the court and how loyally they do it.

1341. (*Chairman.*) The difficulty generally is that the clients keep back from their advisers something which might affect their position?—Yes.

1342. (*Judge Tindal Atkinson.*) In cases where a party appears in person, you have not that advantage?—No.

1343. With reference to the want of uniformity of treatment. So long as the grounds for divorce are clearly defined, it becomes really a question of the consideration of the evidence?—Yes.

1344. And no doubt different minds draw different inferences from facts?—Oh, the different minds suffer from different prejudices; I have no doubt about that.

1345. And that might apply (with respect I say it) to the two judges of the Divorce Division?—And does.

1346. If you get all the cases divided between the two judges of the Divorce Court, and they both differ in their treatment, does it make any difference if 55 judges dispose of the different cases and half of them treat one way and half the other?—No, but I think a number of the 55 ——

1347. (*Chairman.*) Are we not getting into an argument rather than fact?—I think so.

1348. (*Judge Tindal Atkinson.*) There is one other suggestion I would make. I do not know whether you will agree with it. Would it be possible, in order to enable these cases to be tried in the locality, as suggested by our Chairman, that the Lord Chancellor should nominate certain county court judges, like he does in bankruptcy, to try these cases in certain centres?—I have never heard that suggestion, and I have not thought about it, and, if you will allow me, I will not answer.

1349. (*Chairman.*) There are one or two questions which the questions that have been asked you have suggested to me, and perhaps I might put them to you. With regard to your view as to the jury and judge, I dare say you will recall that the ecclesiastical courts acted entirely by the judge alone?—Yes.

1350. Although their relief was only that of separation—the class of case that requires relief was very much the same that justified divorce?—Yes.

1351. One other point about the jury, which may not be generally known, and I only want to bring it out by you. Trial by a judge can be viewed with simplicity in the Court of Appeal on the notes he has taken?—Yes.

1352. And with a jury it would necessitate a re-trial—if a re-trial is ordered?—Yes.

1353. Do you find, as a matter of fact, that trials by jury or judge are most expensive?—I should think trials by jury are much more expensive than trials before the judge alone.

1354. And much longer?—Much longer.

1355 Then one point on collusion and the possibility of disclosure to the judge. There is a provision at present that petitioners can be asked nothing about their own conduct?—Yes.

1356. Would you maintain that provision or not?—I think not.

1357. You would allow the judge or counsel to ask questions of the petitioners?—Yes, I think so. I have not thought very much about it, but I have found difficulties, because of that restriction which I thought were undesirable difficulties.

1358. Might I put a concrete case. I have had it before me. The petitioner proves his or her case of adultery; letters or something are put in which shows conclusively almost to the judge that the petitioner is equally guilty?—Yes.

1359. And yet he cannot ask questions about it?—Yes.

1360. He is absolutely restricted by Act of Parliament?—Yes, I think that is an undesirable restriction, and I have frequently found difficulties in dealing with a case because of that restriction.

1361. Then with regard to remitting to the county courts. It occurs to me to ask what your view would be about this difficulty which arose, from what Mr. Musgrave said, that, in order that a poor person should conduct their own case in any form in the High Court they would have to apply, by appearing themselves or through solicitors, for something to be done in London. Suppose Judge Tindal Atkinson's suggestion was adopted of interlocutory proceedings in the country, and then it had to be decided whether the trial should take place in the country, you would have to apply to the judge in London for that purpose?—Yes.

1362. Then there is that difficulty for poor people; how would they apply in London without appearing themselves or by a solicitor, unless an official of the court could do it for them?—Well, it does not involve the presence of the party in London. It involves being represented in some way, and I cannot help thinking machinery might be found for making the application in London which would be quite cheap—so cheap as would put it into the hands of anybody who really requires to get the relief.

1363. Then on a point you have mentioned about granting a decree to a wife where there was continuous adultery on the part of the husband. Your view would be, as I gather from your evidence, that might be a case in which relief should be granted to a wife?—Yes.

1364. But not in what you term "accidental" cases?—Well, yes. I do not know that it is the right word to use; but if it is not you must supply a better one.

1365. No, it is only to bring to mind the class of point that was presented by you—of that which was not continuous and might be overlooked?—I do not like doing it; but I could suggest numbers of cases.

1366. But what I want to ask you about that is this: Have you found in the course of your experience that in many of these divorce cases you meet with unfortunate cases of disease communicated?—Oh, no doubt. I am sorry to say it is a frequent basis for an allegation of cruelty, and true

1367. That is to say, infecting with disease as a ground of general cruelty?—Yes.

1368. Now, I would like to ask whether your view would be that the cases of this casual or accidental—or whatever word is used—adultery, whether that is not the class of case in which it is extremely likely that disease might be acquired and then communicated?—Well, it is no doubt from such acts of adultery—if that is the right word to apply to it—that very frequently these consequences follow.

1369. Does that consideration at all affect your view as to the wife having the option to take advantage of it?—No, not at all. I think the breaking of the marriage tie is so serious a matter for the children and for the man and the woman that I would not break it except for the most serious causes, and I should not regard that as one of the most serious causes.

1370. Then one broader point which has not been put, but which I think may be considered by other witnesses. Have you formed any opinion as to any possible improvement in the marriage law to check what I may call improvident and reckless marriage, which I think you will agree with me, is a great deal of trouble in divorce cases—young and reckless people marrying without consideration?—I do not know how you are to prevent it. That it takes place there is no doubt.

1371. In some countries, I have found from study, it is much more difficult to get married than in England?—Yes.

1372. There is more examination into the status of people and their qualifications made. Practically none is made in England. Have you considered that subject at all?—Very little; but I know something about France, for instance, and I know something about the difficulties there placed in the way by the law of young people getting married; and I think, though I cannot give any figures or reason, those difficulties tend to

what we call immorality, that is to say, to two young people living together without being married at all. At the same time I am satisfied that our young people get married very often without any thought at all.

1373. And with no inquiry beforehand as to whether they are fit to marry?—No; and there are no means of inquiry at present.

1374. That is a larger subject, and I did not know whether you had really gone into it?—No, I have not gone into it.

1375. One point about crime. Your views have been very fully given, but there was one expression used which I think you might be misinterpreted upon. That is when you see the words "it would be hard on the "husband to find his wife taken from him." You hardly meant to convey that anybody would interpose between her and him?—Oh, dear, no; not at all. All I meant was that she might, by herself taking steps of divorce, deprive him of his wife. That is all I meant.

1376. (*The Earl of Derby.*) May I ask you one question about what you said about collusion. You mentioned some cases about the husband paying the wife's expenses when she is the petitioner. That would be collusion?—No, he has to pay her expenses under the law. That is to say, he has to provide her with the means of prosecuting her suit; if I said paying expenses, what I really meant was giving her a sum of money to bring the case, and promising her, as very frequently happens, a substantial sum of money if she succeeds.

1377. But that would not be collusion if that was settled, say, on children?—Oh, yes, it would, I think.

1378. It would be enough to invalidate the petition?—Oh, I think so. I think if the parties make a bargain that if one will bring a suit the other will give money if the suit succeeds—I think that is collusion.

1379. Sufficient to invalidate the petition?—Yes, it is at present. I want, Lord Gorell, to say this. You asked me a question about the results of common sorts of connection that may take place between a man and possibly a prostitute, or something of the kind, and the consequences. It must not be for a moment supposed that I regard those consequences at all as a light matter. I think such consequences are of the most serious kind.

1380. (*Chairman.*) Well, we have known how they have affected the petitioners, and I dare say you have met with cases of children, too?—Oh, yes, in the interests of wife and children, and so on; but still I should be sorry to see accidental incidents of adultery affording a ground for putting an end to the marriage tie.

1381. (*The Archbishop of York.*) There is one small matter of fact, Sir John, as you are here, that I should like to get your experience upon. In the cases that have come before your courts where litigants apply *in formâ pauperis*, or, indeed, in any other case, what are the classes of community in the main from which these litigants come? Would you agree with the position that they are mainly the wealthier class, or the bulk of the rich and the very poor?—The popular view, your Grace, is that the Divorce Courts are busy with the affairs of the rich. That is a mistake, I think. The newspapers report those cases, and the public form their impressions from what they see in the newspapers. It is a mistake. The poor and the very poor resort to the court and in large numbers, and I do not think, for my own part, that the morality of the rich is any worse than the morality of the other litigants in the court.

1382. On the question of publication. Before you leave us I should like to know whether you think the restriction of publication, even of some details, would have any bearing on the detection of perjury or collusion?—I do not think so.

(*Chairman.*) Perhaps the Lord Archbishop would let me say, in the table there is an exact description as to the position of the parties—the exact statement in the marriage register as to the occupation of the people in the suit. The Commissioners would probably like to see it; "Husband's occupation at date of marriage." I daresay this is only on the husband's petition, because it is not always given on the wife's petition, and I see the figures are only 246 cases; but of those 246 cases (taking only the chief ones), 32 are military and naval officers, 30 are soldiers and naval seamen; physicians and surgeons, &c., 25; engineers, architects, &c., 45; painters—that is only a small one; actors, musicians, &c., 40; other professional occupations, 13; that is the professional employments. Then agricultural: farmers, 12; other persons, 3; mine owners, 12; and miners, 12; builders and decorators, 25; metal workers, 20; furniture trades and wood workers, 8; makers of textile fabrics, 11; and then makers of clothing, &c., 15; other trades, 40; not specified, labourers, 17, and others, 13. Then there are navigation and fishing people, 24; inland transport, 35; trades of all kinds, 327. Amongst those are merchants, traders, &c., 55; brokers, agents, &c., 55; secretaries, clerks, &c., 55; travellers, salesmen, &c., 41; porters, messengers, &c., 7; publicans, hotel keepers, &c., 24; dealers in articles of food, 43; dealers in clothes, furniture, &c., 10; other dealers, 37.

I think, on behalf of the Commissioners, I ought to thank you very much for your evidence, Sir John Bigham. We have derived the greatest possible assistance from it.

Sir GEORGE HENRY LEWIS, Baronet, called and examined.

1383. (*Chairman.*) I think your name is so well known to us I need only ask you the dates that are material. You were admitted a solicitor in 1856?—I was.

1384. And have you practised in all branches of the law for 54 years?—Yes.

1385. Now you have retired from practice?—Yes.

1386. The date of 1856 is important, as that is prior to the passing of the Divorce Act?—I remember the passing of the Act in 1857.

1387. Therefore you will be able to answer questions that I will ask later on about that. Have you had a very large experience of practice in the Divorce Court?—Thousands of cases; mostly amongst the wealthy and well-to-do people.

1388. Have you formed any opinion as to the desirability of amending the law?—I have for 30 years been agitating in the public press the amendment of the law by giving divorce for the five subjects that the two judges have now admitted, in their opinion, divorce should be granted for.

1389. Do you mean by that equally to husband and wife?—Equally to husband and wife for desertion, for cruelty, for lunacy, and for the imprisonment of a criminal for five years; and I have publicly, years and years ago, given those as grounds as to which an amendment of the law ought to be made.

1390. You omitted to mention adultery?—Adultery, yes.

1391. But has your view been that adultery simply should be open as a ground for either party?—Yes; I think that if the husband commits adultery the wife is entitled to a divorce, in the same way as if the wife commits adultery the husband is entitled to a divorce.

1392. We had Sir John Bigham on limitations of a wife's adultery; cases where it might be determined, continuous, or with indignity?—My view is that the wife is entitled to divorce if her husband commits adultery without its being continuous. If she commits adultery without its being continuous she is divorced, and I see no reason why there should be any difference between the husband and wife.

1393. What is your view on the point on which I asked Sir John Bigham just now, in connection with that—perhaps I might call it, as it has been so termed, accidental adultery—on the part of the husband with regard to disease and any consequences?—I have had cases before me of the most painful character, where the husband has committed adultery, then has returned to his wife; the facts have become known to her; he has not infected her with the disease, but she was

attached to him and nursed him, and tried everything she possibly could to change his manner of life. I regret to say in one case he was a member of Parliament, he was a drunkard, and, notwithstanding all the efforts of his wife, he continued in the same course of life. She went through a rest cure, her health was broken down. She still stood by him, concealed it from everybody, and tried her very best to reform him, and, finally, she had to go through another rest cure, and in the end she had to file a petition for a divorce on the grounds of his adultery and his cruelty, and the court held, under the circumstances, it was cruelty, and they granted a divorce.

1394. That is hardly the point I was asking?—But I simply give this as an example of a case of a wife of a man who returns home infected by illness.

1395. But would your view be that, what Sir John Bigham called accidental adultery, is a likely cause of disease?—Yes, it is.

1396. Would it be probable, it would be more so or less so, than from what he termed continuous adultery?—Well, I suppose, the disease would be aggravated if he continued adultery; but that is a medical question.

1397. What I was endeavouring to ask was, he distinguished between accidental and continuous. Accidental I understood him to mean was when a man went wrong perhaps with some prostitute on an occasion when he was drunk?—Yes.

1398. Is that a class of case which has come before you, and is it a class of case in which these serious consequences of disease might possibly be expected?—Certainly, and my judgment is that divorce should be granted to the wife in such a case. If the wife committed adultery when she was drunk a divorce would be granted against her. It is no defence.

1399. The next part of your note deals very much with this point, I think. You say, "As the law now "stands divorce is granted to a husband for the "adultery of his wife, and the custody of the children "is given to him. The adultery of the husband, how-"ever flagrant, does not give the wife a right to "divorce. A husband may live in open adultery with "a mistress under his wife's name and flaunt his "mistress before his wife and children, and the only "relief which the court can give the wife is an order "that she may live separate from him for the rest of "her life." You disapprove of that?—I disapprove of it, because I think it is a wicked state of circumstances for the wife. A lady goes into court in the ordinary way, and she proves that her husband has gone to a hotel, stopped with a prostitute, passed her off as his wife and in her name, and committed adultery. She applies to the court for relief from such a state of things, and for relief (if it is possible for the court to give it to her) from his continuing this outrage upon her in future. All the relief the court can give her is to say, "You may live by yourself for "the rest of your life, chained to this man; he can "continue to outrage you in the same way; insult you "in every possible way; declare you were a person he "had to get rid of, and so forth; and that is the life "you are to lead." Ladies have told me over and over again that it is absolute torture to them; that their last thoughts when they go to bed and their first thoughts when they wake in the morning is how they can get freed from the chains that are around them by this marriage. All I can say is, in my opinion it is an outrage, and if this poor lady, after years of living alone, should form a friendship, however innocent it may be, with a man, this man who still continues her husband can disgrace her and disgrace her relations and children by bringing a charge against her in the Divorce Court, although it may fail. Her life is a perfect misery, and I wish to point out further, that if a father has settled 30 or 40 thousand pounds upon his daughter, or if she has a fortune of her own upon the usual terms of the marriage settlement, to give to her perhaps the interest of the income during her life, second life interest to the husband, and then the capital amongst the children—if she applies to the Divorce Court under a judicial separation to vary that marriage settlement, to take away from the husband the second life interest that he has, the courts say: We have no power to do it. If you had committed "adultery we have power to do it; if you had com-"mitted adultery and only a judicial separation had "been asked against you and not a divorce, we have "power to do it. But as your husband has committed "adultery, and a judicial separation is granted against "him, we have no power to do it." But then this lady says: "But I have children. If I die my husband will "enjoy this income and spend it with his mistress, and "my children may be in want." The courts say: "We "cannot help you," and if she has no children when she dies, this husband, who has brought all this misery and degradation and outrage upon her, receives the capital sum which her father has settled on her on her marriage.

1400. That is a case where there is only separation?—That is a case where there is only separation, but that is all that is given to a woman now.

1401. Then I see your note also says, when the husband dies and adultery has been committed, he need make no provision for her unless he chooses to do so?—Certainly.

1402. Then you add: "The wife so separated has "no hope of a future marriage or children, but is "chained to her husband. On the other hand, the "husband may continue to live in open adultery?"—Certainly, and does so.

1403. "In like manner if a husband beats his wife, "or is guilty of other brutal acts towards her, the only "relief the court can give her is to allow her to live "a life of solitude tied to her husband for the rest "of his life"?—Yes; there are cases in the courts of cruelty where a husband threatens to shoot his wife, has treated her in a most barbarous and wicked manner, and threatens to shoot her, and sleeps with a loaded pistol under his pillow, and I have seen the court hold that that is not cruelty. I cannot conceive anything more brutal than a woman treated in such a manner it is cruelty of the worst kind.

1404. Then you add also another instance: "When "a husband deserts his wife and remains in this "country or goes to another country where he is never "heard of again, she is in exactly the same position"?—Certainly.

1405. That means she cannot get a complete divorce?—No.

1406. Though for desertion for two years she can get a judicial separation?—She can get a judicial separation only for the adultery of her husband, or the cruelty of her husband, or the desertion of her husband. She is chained to him for the rest of her life; she can have no marriage and no children. Fancy a normal healthy wife placed in such a position as this for the rest of her life. I say the law ought to be changed, and that for all those reasons the wife ought to have divorce on equal terms with her husband.

1407. I think a lot of your proof you have already covered by what you have said. You have had your attention drawn to Scotch law?—Yes.

1408. What do you say about that?—I thoroughly agree with it.

1409. That gives the right of divorce on the ground of husband's adultery?—Yes.

1410. And also for his desertion for four years?—Yes. I take exception to four years' desertion; I think it is too long, I think two years of desertion is quite long enough. If a man keeps away from his wife for two years, I think that shows he has abandoned his matrimonial home altogether, and left her to her fate.

1411. I notice that you think, in addition, she ought to have divorce for cruelty. In Scotland that is not a ground for divorce?—No.

1412. But you have included that as one of the causes that there should be in England?—Yes.

1413. Entire freedom?—Yes.

1414. Not merely a judicial separation?—No.

1415. You mean it should be desertion alone, without coupling it with adultery?—Certainly.

1416. Do I gather your view is that, where these causes, such as you have indicated, amount to the impossibility of the two parties living together, the wife should be free if she chooses?—Certainly.

1417. And the husband in the same way?—Certainly.

1418. Now, with regard to the poor?—Oh, it is a shocking position is the law of divorce for them. There is no divorce for them. As the law now stands there is no divorce. Unless there is an alteration in the law it will continue as it has always existed.

1419. Will you tell us why you say that?—Because the poor have not the means to come to the Divorce Court in London, and if they want divorce they must come to London for it.

1420. Have you formulated in your own mind any alternative suggestion for that, as to the means of constituting a tribunal and dealing with it in the country?—Certainly I have.

1421. Perhaps you will give us your view?—Well, I think it is an insult to tell the county court judges they are not competent to try questions of fact, whether adultery has been committed, or whether cruelty has been committed, or whether desertion has been committed. I refer to the Act of 1895, which gives to the local justices the same power in judicial separations as is given to the High Court judge by law.

1422. In the cases mentioned in that Act?—In the cases mentioned in that Act to which I wish to refer. None of them are lawyers.

1423. Except the stipendiary?—I am dealing with the petty sessional justices; they are not lawyers, and the Act of Parliament was passed in 1895, giving these men who are not lawyers, the right to give judicial separation to a wife whose husband has been guilty of desertion or cruelty or misconduct.

1424. No, not adultery?—Well, I wish to refer to it. (*referring*) "That the applicant be no longer bound to "cohabit with her husband, which provision while in "force shall have the effect in all respects of a decree "of judicial separation on the ground of cruelty." Parliament has actually given to men who are not lawyers the power to determine the question of cruelty. "That the legal custody of any children of the marriage "between the applicant and her husband while under "the age of 16 years be committed to the applicant; a "provision that the husband shall pay to the applicant, "personally, or for her use to any officer of the court "or third person on her behalf, some weekly sum not "exceeding 2*l*." That is the jurisdiction the High Court has in judicial separations, but beyond that—which strikes me as extraordinary—Parliament gives the power to these justices the right to determine whether the wife has committed adultery.

1425. That is if it is set up as an answer?—Yes, and yet in face of that power given by Parliament, we are told that the county court judges, who are some of the most learned judges we could have, are not fit to try the cases of the poor.

(*Judge Tindal Atkinson.*) You will observe at the end of section 6 there are other questions decided by the judges which are decided in divorce causes.

(*Chairman.*) Perhaps you would read the section.

1426. (*Judge Tindal Atkinson.*) The section is "No "order shall be made under this Act on the application "of a married woman if it shall be proved that such "married woman has committed an act of adultry, pro-"vided that the husband has not condoned or connived "at, or by his wilful neglect or misconduct conduced to, "such act of adultery." Those are all the elements in the Divorce Act?—I think there is also a clause that they may annul the order.

1427. (*Mr. Brierley.*) Yes, they must annul the order on the ground of adultery?—Yes, so that Parliament has already given to these gentlemen, who are not lawyers, who have no experience in legal matters, the right to order judicial separations amongst the poor, and to give them the right to determine whether a woman has committed adultery or not. I say, in face of that, for anyone to come here and to argue that the county court judges should not be entrusted with those duties is to me astonishing. But I wish further to point out under this Act that if the husband commits adultery—a man coming under this law—the wife has no protection whatsoever; the justices have no power to inquire into it. The husband may commit adultery, and what is the poor wife to do? He may continue to commit adultery, and then in disgust and horror at the position in which she is placed, she may say, "I will go away," and she goes away. The court has no power to give her alimony; she cannot take her children away with her; there is no power of the court to order that she shall be allowed to take them. When she is pining for her children, after a time, all she can do is to go to the Chancery Division of the High Court and, under the Infant Custody Act, to ask for her children to be given her. Of course, it is impossible for her to do that as she has not the means to do anything of the sort. So it seems to me the law, as far as the poor are concerned, is in a painful and disgraceful condition.

1428. (*Chairman.*) I follow that last point. You are pointing out that the Act gives no power to make a charge of adultery, and to get relief from it?—Yes.

1429. The husband may be living in adultery as much as he chooses, and still the wife must go to the High Court?—Yes.

1430. She cannot go to a magistrate?—No.

(*Mr. Brierley.*) Unless the adultery amounts to desertion.

1431. (*Chairman.*) And then you still have to go to the High Court to get divorce?—Certainly.

1432. You use this Act as applying to the poor. As a matter of fact it applies to everybody who chooses to apply?—Yes.

1433. But there is a 2*l*. limit for the order for alimony?—Yes.

1434. And therefore those in better circumstances do not use that particular Act?—Yes.

1435. Then after referring to that Act your note says, "Under these orders, however, no matter how "cruel a husband has been to a wife, she can never be "free from him"?—Certainly. It is the same as judicial separation granted in London. There is no difference. These poor women are chained to these men for the rest of their life. They can have no marriage, and the result is, of course, when the husband does not pay the income or when the husband disappears, and so forth, what are these poor women with three or four children to do? And it leads to immorality, and naturally must. Whereas, if they were allowed to be free, they might make a new marriage and live respectable lives.

1436. Have you had any experience whether or not when these orders for separation are made with an allowance to be paid by the husband he always remains to pay that, or if he disappears?—I cannot say that I have had any experience amongst the poor.

1437. Then we will ask somebody else about that. There is one point on the Act which I think you have not dealt with. It is on the middle of the third page of your note: "In the case of a wife who has possibly been brutally treated"—I am not sure that I follow what that refers to, perhaps you will explain what your view is?—"In the case of a wife who has possibly been "brutally treated by her husband and forced to obtain "an order for separation, the magistrate is not allowed "to take into consideration the conduct of the husband "and how far he has conduced to her adultery, but he "is bound to rescind the order." That is the statute.

1438. If she subsequently commits adultery?—If she subsequently commits adultery. It is not very logical, because when the order is to be obtained the court can take into consideration whether the adultery has been committed in consequence of the connivance or conduct of the husband. But when the court has made the order, and when it is clear that the woman has been brutally treated—otherwise he would not have obtained the order—if any moment she commits adultery everything is gone.

1439. Even though she was driven into it?—Even though she was driven into it.

1440. Then you summarise it thus: "In my opinion "the right of divorce should be given to the wife of a "poor man for his adultery, and in the case of either "cruelty or desertion"?—Yes.

1441. Would you confine that to the poor man?—No, I would give divorce also when the husband is sentenced to five years' penal servitude, or when he is a lunatic.

1442. And not confine it to the poor man only, but make it uniform?—Certainly; I would give to the poor the same as I would give to the rich.

1445 With regard to your suggestion as to jurisdiction; I gather from what you have said you would leave that with county court judges; and, you add, "metropolitan police and stipendiary magistrates"?—I would give that if the county court judges were not sufficiently numerous, but I would not trouble the stipendiary magistrates, who are quite as able as the county court judges—but I would not trouble them if the county court judges are sufficient in number. I am strongly of opinion that these cases ought to be commenced in the county courts, and ought to be tried before the judge notwithstanding all I have heard of the evidence given by the two learned judges. It is a question of fact whether adultery has been committed; it is a question of fact whether cruelty has been committed; it is a question of fact whether desertion has taken place. County court judges are disposing of questions of fact, and of serious fact, every day of their lives. I cannot see any magic in the word divorce. It seems to me that the county court judges can determine these questions—I do not wish to say with equal—well, I really think, with equal, certainty as the judges of the Supreme Court, and I see no reason why the county court judges should not do so. At the present moment these people cannot come up to London; they have not the means to come to London; probably there are great difficulties in bringing their witnesses to London; great difficulties in getting witnesses in this class to obey subpœnas—to be away from their work and from the neighbourhood, and to be in town two or three days, or in looking after them when they are in town. But as you have a staff of trained lawyers in county court judges, for whose qualities and judgment I entertain the very highest admiration, I think you have there on the spot the very people you want to try the cases of the poor. The only one thing is, of course, the question for the State of increasing the salaries of the county court judges who would have to undertake such duties. They are rather ill paid as it is, in my opinion.

1444. The learned judges we have had rather suggested there might be lack of uniformity in the view taken by the judges. What is your view about that?—I do not understand it. With the greatest respect to the judges, they say there are questions of collusion. Why, collusion has been produced by Act of Parliament; it is not ordinary collusion. An Act of Parliament was passed which gave to the wife the right to write to her husband and ask him to return, and he to say, "I won't return." Thereupon there was desertion. The learned judges have said that all those cases are collusive cases. The moment you abolish that you give divorce for adultery pure and simple; collusion disappears. At the present moment, if a husband commits adultery and his wife discovers it, and she threatens to bring a suit against him, he knows perfectly well the result of that will be that she will simply get a judicial separation from him—that she will be chained to him for the rest of his life, and that he will be chained to her for the rest of her life. You cannot blame them if under such circumstances advisers or friends say, "Why do "not you take advantage of this law and arrange to "write a letter to your husband and ask him to come "back, and if he will not come back you can both be "free?"

1445. And on that letter a suit for restitution is instituted?—Yes.

1446. And the decree made?—Yes, and not obeyed, and then there is desertion. That is the collusion at the present moment which has been produced by Act of Parliament—not by the parties themselves. I do not believe there is collusion in the Divorce Court at all, or very little indeed.

1447. That exists because of the necessity for the wife to have to prove desertion as well as a case of adultery?—Yes.

1448. Sweep away that, you would have a charge of adultery which you could establish in the Divorce Court?—Certainly, and collusion will disappear. I do not attribute any blame to the learned judges who try these cases, because the Act of Parliament has ordered them, in the event of a refusal to comply with the order for restitution, to give a divorce.

1449. You are referring to the Act of 1884?—Yes.

1450. That abolished the old suit for restitution, or rather the consequences of it, which were imprisonment, or something of the kind?—Where the husband or wife refused to obey the order of the court they were attached and put into prison—not a very pleasant outlook for the wife or husband when they had been in prison, when they come back to bring happiness to the home.

1451. And the effect of the order being disobeyed was to give a wife a position as if she had been deserted for two years?—Yes.

1452. And you think that has been used for the purpose of collusion in the present day?—I do.

1453. Now, suppose the King's Proctor were retained for the purposes of intervention, what do you say about the working of his office as far as county courts are concerned?—Well, I have the greatest admiration fot the way in which the King's Proctor has performed his duties always; but I think that in cases in the county court his interference would not be necessary. I think the registrar of the court, who is a solicitor living on the spot, would have opportunity of making inquiries such as the King's Proctor would make. I think it would be a saving of expense, and probably the information would be obtained more readily, because the thing would be carried out in the neighbourhood, and so forth, instead of inquiries being made in London. I think on the spot those inquiries might be made with very little expense and with perfect satisfaction.

1454. Then, if your view is right and the law were amended as you suggest, do you anticipate that cases in the country would present collusion?—No, I do not think so; amongst the poor people, no. With reference to the question you put to me as to the King's Proctor in country cases, I do not know, but I should think he probably follows the course that most solicitors would do, and writes to an agent in the country to make inquiries.

1455. Yes?—Well, that could be done without his interference in the same manner.

1456. Then there is the question about lunacy. What is your view about that?—I have always been of opinion that divorce should be granted for lunacy. I cannot conceive anything more dreadful than either a man or a woman to be chained to a raving lunatic for the rest of his or her life. The law restrains his person, the law takes possession of his property and appoints a committee to look after him, and as far as marriage is concerned, of course, it is absolutely at an end. I think divorce should take place for lunacy, but I think there should be every possible precaution, and it should be only after two years' suffering, and upon the certificate of the superintendent of the asylum and of two or three other doctors that the case is incurable.

1457. Would you limit that to cases where the two married parties were youthful, or would you extend it to cases where they were even of older age?—I should give it unconditionally, but you must remember that probably the wife of a certain age would not dream of taking any proceedings against a husband in that condition, but I would leave it open.

1458. To those who thought it desirable?—Yes, I would not limit it.

1459. Now, the next point is your view as to the case where the opposing party to the petitioner has been sentenced to a term of imprisonment?—Yes.

1460. I should like you to give your views about that, and whether there are any limitations you would suggest?—Well, I think if you are to give divorce for desertion you cannot hesitate to give it where a man by his own misconduct has committed crimes against the laws of the country, and is sentenced to five years' penal servitude. I think it is impossible to avoid doing so; it is desertion in its very worst form. But you must not forget that under the Divorce Act divorce is granted for certain crimes.

1461. Certain abominable crimes?—Oh, certainly other crimes. It is granted for bigamy with adultery; it is granted for rape. There are certain crimes.

1462. Apart from crimes of that character you would give it in all cases where there has been a sentence for a certain length of time?—Yes.

1463. Have you formed a conclusion as to what term you would fix upon?—A sentence of five years' penal servitude shows the gravity of the offence committed. At the present moment the law is in this condition, that if a man who has received five years' penal servitude returns, and says to his wife, "Now I "am coming to live with you," and she says, "You "are a horror to me after all that has happened, and "after the solitary life I have lived, and the disgrace "you have brought on me," he can file a petition for restitution of conjugal rights, and the court is bound to make an order, and if she disobeys that order the court may take from her property or from her earnings, if they choose to do so, money for his support.

1464. Or the children?—Yes. Well, I assume she has the children if he has been sentenced, and of course the court may order the children should be returned to him.

1465. (*The Earl of Derby.*) Could he get custody of the children?—Certainly.

1466. (*Chairman.*) That is equally true of a case where a man has been guilty of murder, and has had his sentence commuted to a lengthened period—20 years' penal servitude.

1467. I think we understand your view?—I should like to say, as it comes into my memory at this moment, with reference to judicial separation, I filed a petition a few weeks before I retired for a lady 25 years of age. Her husband had gone to a hotel and lived with a woman there under his name and passed her off as his wife. When that lady of 25 years of age gets her decree of judicial separation she can never marry again; she can never have children; and she is chained to this man for the rest of her life. I cannot help thinking that such a law cannot be allowed to exist.

1468. Perhaps I might ask you upon this for a moment. We had it said by one of the witnesses yesterday that morality had not been improved since the Act of 1857; what do you say about that?—I think there was more immorality before the Act of 1857. I was a young man at the time, but I should say there was more immorality before the Act of 1857, and I think if you give divorce for the immorality of the husband you would find there would be less immorality. A man thinks now he can go out and commit adultery and take his chances, and the wife will probably forgive him, and so forth, with all the danger to her health that that involves.

1469. Then your view, if I appreciate that correctly, would be that extending the causes in the way you have indicated would be in the interests of morality rather than adverse to them?—Certainly, in the interests of morality.

1470. Now, the next thing you deal with is publication of reports?—Yes.

1471. Will you kindly give us your views about that?—Well, I am a newspaper man in the sense that I represent a great many newspapers, or I have represented a great many, and my firm represents a great many newspapers, and I know perfectly well the proprietors of newspapers have no desire whatever to publish any matter which is painful or indecent; but at the same time it is a very disagreeable subject altogether, and I do see in some of the papers references which I think ought not to appear. I think there is no good in publishing these reports, "A servant "saw the respondent coming out of the co-respondent's "bedroom," and all the quarrels and indecencies that take place under such circumstances, I think are better not published.

1472. Do you think it is any advantage to the public to read the details?—No, I do not.

1473. Even though not indecently reported?—I do not see very well how you can report if you give any picture of the trial without referring to incidents which are very disagreeable. Again, I think it is a very painful thing for the children; a great many are grown-up—girls of 15 and 16, and so on—and they have the chance of reading of the conduct of their parents. Also it is very painful to the relatives of both parties.

1474. Do you think publication has any deterrent effect on the commission of the original offences?—No, I do not.

1475. Have you any grounds on which you can help us to a conclusion on that point?—I have not seen any difference in the number of cases going to the Divorce Courts one way or the other.

1476. You think it has no effect on morality?—No, I do not think so.

1477. With regard to the parties?—I do not think so. I think they are spicy reading; a great many people take up the paper and the first thing they do is to turn up and read about the Divorce Court and read that, and then put it down and do not read anything else.

1478. But the view is expressed that it is a deterrent to the commission of a marital offence in the origin?—I do not think so.

1479. What is the basis of your view?—Because I have seen no difference in the number of cases that come before the courts.

1480. Then you desire to draw attention to one or two minor matters?—Yes.

1481. The first is the entry of a re-marriage in the registrar's book?—Yes. At present where the wife or the husband re-marries he or she is described as the divorced wife or the divorced husband of A. or B. I say that the register ought to contain a statement—the divorced husband or the divorced wife on the petition of the husband or wife divorced.

1482. To show at whose instance it is done?—Yes, because I think if there are children of the second marriage it might be very detrimental if they had to produce for the public service a certificate of their birth showing that their mother was the divorced wife of so-and-so.

1483. Without showing who is guilty?—Yes.

1484. Then you deal with the 28th section of the Divorce Act, under which a husband has to make an alleged adulterer co-respondent?—Yes.

1485. But you point out there is no provision of a similar nature in the case of a woman being charged with adultery with a man. Will you just explain that?—When a petition is filed by a husband against a wife the co-respondent is served with a copy of that petition. When the charge is made by the wife against her husband charging adultery with some lady she is not served with any proceedings at all. The case may be taken for trial, and she may wake up one morning and find herself found guilty of adultery without having had the opportunity of defending herself at all. I think that is wrong.

1486. You would require a person named (a woman) to be served just as much as a man?—I would.

1487. I believe there is power on the judge's part to allow her to intervene?—Yes.

1488. But there is no provision made for bringing the facts of the case to her attention?—No. I wish also to call attention to the fact that in judicial separation there is no power in the court to allow either of the parties to appear.

1489. You mean a judicial separation might be presented on the ground of adultery and the other party to that adultery is not served at all?—No, and not allowed to appear; and in cases where an answer is filed—take a case of a husband charging his wife with adultery and she charging him with a cross-charge—if no relief is asked by the wife the party is not allowed to appear or to be heard at all.

1490. However, the point you drive at—without going into the details—is this ——?—But that is in addition to what I have said.

1491. But may I summarise it? As adultery is a joint offence, wherever that charge is made the party to that charge should be made a party to the proceedings?—Certainly.

1492. By service of the proceeding upon them?—Yes.

1493. So that they may come into the proceedings if they like?—Yes.

1494. Whichever form it takes?—Certainly.

1495. There are two questions beyond your proof which were suggested by something said on Saturday, which I should like to ask. There are cases where a petitioner at present asks for a judicial separation only where the ground exists for divorce. Would you allow the respondent in such a case as that to insist on the decree being made as a divorce decree?—Certainly I would. I mean, supposing a man sued his wife for adultery, and when he got into court he asked for a judicial separation only. I would give the wife provision to ask the court to make it a divorce.

1496. And the husband the same in similar circumstances?—Yes.

1497. Have you known cases where petitions have been filed for judicial separation by the wife, for instance, where there was ground for divorce in the petition, limited to separation as a punishment as it were to the respondent?—I have no doubt it has been frequently done, but she punishes herself also.

1498. Would you give the respondent the right to ask that a decree should be complete, and not merely a separation?—I would. Such cases are generally filed where the wife wishes to extort a sum of money out of her husband, and instead of asking for a divorce she asks for a judicial separation though she has grounds for a divorce, and the moment he is willing to give the money she will get a divorce; but I suppose I should be told that is collusion. I do not see it.

1499. One other point on which your view will be of considerable value. What is your view when the petitioner is guilty of some act which at present may deprive him of the right to a decree? We know there is a difference between England and Scotland on this subject. In other words, recrimination in England is a bar, or a discretionary bar, and, as Lord Guthrie has pointed out, in Scotland that is not the law. What is your view about that?—I am an admirer of the Scotch system. If you give divorce for the adultery of the husband, and the wife has committed adultery also, how is it possible that you can allow such a marriage to stand when both have been guilty? You would give a divorce if one had been guilty, but if both had been guilty it seems to me——

1500. It is pointed out if you did that it would largely tend to the increase of immorality; that people would not care, and would do much as they liked, and could get their suit through?—I see no reason for thinking so. People are not immoral usually in these divorce cases except in some instances where men are extremely brutal, and they do not want to lead immoral lives. I think if you tie two people in that way because they have both committed adultery, the result is that you have before you the spectacle that these two people will probably live a life of immorality afterwards because they cannot get married.

1501. You mean they have already been immoral and will probably continue so?—Yes, certainly; whereas if you free them, a woman who has done wrong may repent, or the husband may repent, and they may live perfectly respectable lives after.

1502. One other question mentioned in the foreign codes we had some evidence about on Saturday. Suppose people have agreed through their own disagreements that they cannot live together; some of the foreign codes seem to allow of that amounting to a cause of divorce, if persisted in for so many years to the satisfaction of the court?—What is called *divorce à l'aimable*. I must say I do not go as far as that. I think if two people have married they should try to get on together if they commit no matrimonial offences. If they cannot, then, as many people do, they must separate by deed of separation, and the husband supports the wife and the children, if there are any. I cannot bring myself to think that. Otherwise you would have this state of things: a man might fall in love with some woman and become almost impossible to his wife, and the wife may fall in love with some man and become impossible to the husband, and there will be quarrels, and both would wish to be free and to go before the judge and say, "Oh, yes, we cannot get on together," and so on. I am not in favour of that.

1503. The suggestion of the foreign codes is that if that is persisted in for a certain number of years——?—Yes, they go up at intervals before the judge, who, no doubt, hears what they have to say.

1504. That does not meet with your approval?—I do not approve of it.

1505. Do you think in that class of case either party is likely to furnish a cause of divorce which is unfounded, but apparently sound, in order to allow that decree to be carried through?—Well, I would not answer for the ingenuity of anybody.

1506. I am sorry to say I have had to suspect that sort of case myself, and I thought your experience might help us to throw some light upon it. To put it plainly, where one party desiring and the other not very much objecting, one party provides an apparent case without any act of immorality at all?—No, I cannot say I have come across any such case. A man going to a hotel and staying at a hotel with a woman under the name of Mr. and Mrs. So-and-so—where there has been no adultery, but where the court would naturally draw the inference that adultery has been committed?

1507. Yes?—I do not say I have come across such cases.

1507*a*. I have had occasion to suspect it?—No doubt there might be. It is open to the possibility.

(*Chairman.*) That is all that is in your proof, I think.

1508. (*Mr. Brierley.*) I will leave the wider questions of your evidence to be dealt with by other members of the Commission, but I should like to ask this: You are in favour of jurisdiction being given to county courts?—I am strongly in favour of it.

1509. Do you see any advantage in restricting that jurisdiction to certain county courts in the district, or would you give it to all of them?—I would give it to all of them. I cannot understand what is meant by saying that there would be 55 different standards in 55 different courts. I do not understand such a thing.

1510. In that case, would it really be necessary to give jurisdiction to the metropolitan police magistrates, or the stipendiary magistrates, at all?—I should think not, but I only made the suggestion in the event of their not being a sufficient number of county court judges to carry out these duties. Then I think they would be equally competent and able, and that the stipendiary magistrates might be added to the list.

1511. But there is no particular logical ground, as far as you know, for appointing stipendiary magistrates in the country. You get a large town like the city of Bristol, which has no stipendiary magistrate, and a comparatively small one like Great Grimsby has?—Yes.

1512. If the whole of the 55 county court judges had jurisdiction in the courts of their districts there would be no need to grant jurisdiction to the stipendiary magistrates?—I think not, if they are spread all over the country. In France you have, in every department (I think 400 departments, including Algiers), local judges who give divorces. They are not required to come to Paris, but the divorce is given in these districts by the local courts sitting there the same as our county courts.

1513. In that case you would be in favour really of repealing the Act of 1895 so far as it relates to the jurisdiction of the magistrates?—Of the justices.

1514. Yes, of the justices?—Yes, I would repeal that, because it would be no longer necessary.

1515. It would still be necessary to have some provision whereby the wife could obtain maintenance, would it not, until the period of the two years' desertion had run?—Yes, but I should meet that by allowing her, if the husband deserted her, to file her petition at once and get alimony, and if the desertion continued for two years then I would make the decree. Do not you think that would meet the case?

1516. I dare say it might. Of course there are a very large number of cases where the desertion leaves the wife immediately in need?—Oh she must be at

liberty to file her petition at once—directly he has deserted her.

1517. Otherwise there would be no resort for her except to the poor law, which would mean breaking up her home?—None.

1518. (*Judge Tindal Atkinson.*) Would it be advisable if the jurisdiction of the justices were kept alive, that they should be able to make temporary separation orders, we will say, for two or three months, and if they were to be continued it should be necessary to come to the county court to continue it?—I think you would initiate the proceedings at the county court at once as you would in the High Court.

1519. The only reason why I was suggesting this is, it would reduce the number of cases for separation orders which would come before the county courts very materially if there was a temporary order made by the magistrate or the justice?—Do you mean desertion cases?

1520. Yes?—Well, I do not know.

1521. With reference to the stipendiary magistrates, who are drawn from the Bar, and from much the same class as the county court judges, is not this to be considered, that they would not have the staff at their disposal which would enable them to take divorce cases in hand. In every county court district there is an average, we will say, of 12 to 14 registries spread over the district, with a competent registrar and a competent staff of clerks and competent bailiffs; would that rather indicate that county courts would be able better to deal with the divorce than the stipendiary magistrates?—I can only repeat that I introduced into my statement stipendiary magistrates simply that if it should turn out that the county court judges were not sufficiently numerous to do the business, that there were other lawyers equally able to do it; but I thoroughly agree that the staff of the county court is complete for the performance of that duty, but the stipendiary magistrate has not the same staff. I did not want the stipendiary magistrate, but I thought if the county courts were not enough, you might turn at once to members of the Bar who would be able to do it. But I never advocated it, and I do not now. I think the county court judge is the proper person to take these cases.

1522. Then with regards to the King's Proctor; the registrar and the bailiffs of the county court could perform that duty?—Certainly, and I think much better than if it went before the King's Proctor.

1523. (*Sir Lewis Dibdin.*) Sir George, you have made very important suggestions as to the alteration of the law and of the tribunals that should administer the law?—Yes.

1524. I want to ask you a question or two about the first part. I gather you are not in favour of divorce by mutual consent?—No, I am not.

1525. You have given your evidence very clearly the other way?—No, I am not.

1526. But on the other hand, you are in favour, I gather, of allowing divorce where a matrimonal offence has been committed by both parties?—Yes, I am.

1527. You are not making it a bar to the guilty party in coming for a divorce from his guilty partner?—That is so.

1528. Does not it strike you that that creates a difficulty in this way: that a man or woman is placed in a better position so far as getting the marriage dissolved if they have committed adultery than if they have not?—That is why you give divorce—because they have committed adultery.

1529. Yes, but you do not give divorce now, as a reward for adultery, but as relief to the innocent partner?—Yes.

1530. That is the present basis?—Yes.

1531. You propose an alteration in that basis by allowing, where adultery has been committed on both sides, either to come for a divorce?—Yes, I do.

1532. Is not that really allowing divorce where there is a mutual desire for divorce, but with the addition that both parties have misbehaved themselves?—Yes, but you must remember husband and wife are not in the habit of going and agreeing together for the purpose of getting a divorce. These cases of divorce are not numerous; they are all cases where people have not agreed to do anything of the sort. I cannot conceive a case where the husband agrees that his wife should go and commit adultery, and the wife agrees that he shall go and commit adultery. I cannot conceive such a case.

1533. No, I do not think that is such a likely case, but cannot you conceive a case where the husband has committed adultery, and his wife commits adultery subsequently, perhaps driven to it by bitterness and the infidelity of her husband. On your proposal either party could go to the court and get a divorce?—Yes, but there are penalties.

1534. What are the penalties?—Money penalties. I am speaking of the Scotch system, where, if the wife's adultery is proved, she should get no alimony, and she would lose all interest she might have in her marriage settlement, and she would lose the jointure to which she is otherwise entitled.

1535. You think the danger I have pointed out would be sufficiently met by money penalties?—No, I do not; I do not think people are wicked in such a way.

1536. But you would agree divorce law is required for people who are not virtuous?—But if you take the cases of divorce tried throughout the year, they are not numerous, showing that people are not immoral, and do not live immoral lives, and that people do not go and conspire together to commit adultery so as to get a divorce. I cannot believe such a thing.

1537. That is your answer?—Yes. People have children, and do you think such a state of things would exist? I do not believe it.

1538. Then with regard to lunacy; we must all feel the great hardship and gravity of such cases; but what is to happen if the supposed hopeless lunatic recovers? We know that such cases do occur—that, after all the certificates are obtained, the lunatic recovers. What is to happen in such cases?—If you did not get a divorce for lunacy, do you think it would be to the interests of the husband or the wife or the State that a man who recovered years afterwards should go back to his wife and produce a number of children with the hereditary taint of insanity? I do not think so. That is what he might do.

1539. I do not think you have made your answer quite clear to me. What you mean is that the second marriage would go on, notwithstanding the recovery of the lunatic?—There is only one marriage.

1540. No—assuming the man becomes a hopeless lunatic and the wife marries again?—Oh, yes, I see.

1541. And subsequently the husband recovers?—Yes.

1542. I want you to say which of the two husbands is to be the husband in the future?—Why, the second husband.

1543. And the recovered lunatic through his own misfortune is placed in that position?—Yes.

1544. Because the lunacy is not his fault?—I am afraid you would have great difficulty in finding a recovered lunatic.

1545. We know there are such cases?—Very rare. You must not take the exception of one or two cases.

1546. Now I want to ask a similar question about the sentence of penal servitude. You have said that you think a sentence of five years' penal servitude ought to be a ground for divorce. That means not an *ipso facto* ground, but that it should be a reason why the wife should come to the court and ask for the divorce?—Yes.

1547. Does not that strike you as adding enormously to the severity of the sentence?—I do not think so. If he knows it I do not think so.

1548. But surely it is a great aggravation to a sentence of five years' penal servitude if it carries with it the possibility or probability of his wife getting a divorce?—Well I have no feelings of mercy towards a man who voluntarily commits crimes and receives five years' penal servitude. I think he deserves it.

1549. You think that is just?—Yes, I do. You are considering the case of the man?

1550, Yes?—Well, I would ask you to consider the case of the wife.

1551. Yes, but I want you to consider the case of the man first. Take a case you must have met with very frequently, where a man has received a sentence

of five years or more of penal servitude for some form of fraud, or we will say a case of violence in passion—something that does not involve great moral turpitude in the ordinary sense?—Take a company promoter.

1552. Yes. Take a company promoter. Do you think it fair in such circumstances that five years' penal servitude should potentially put an end to the marriage?—Yes, I think so—as a protection to the wife. Do you think he should come home and instil these principles into his children after he has received five years' penal servitude, and force his wife to live with him.

1553. Now you have told us that public morality was not better, and perhaps was worse, before the Divorce Act than it is now?—Well, you must not place much reliance on that. I was a very young man; I am now 77, and then I was a very young man.

1554. And you do not desire to press on us your views of public morality in 1857?—No, I should not like to.

1555. Is it your opinion (never mind 1857—your memory goes back a great many years) that the violation of the permanence of the marriage tie in England has increased or otherwise with the growth of the Divorce Law?—I do not say with the growth of the Divorce Law. I do not say it is increased or decreased, but what I do say is that I think the way people lived 50 years ago—the means they had of living and so forth—that the working classes and the professional classes and the middle classes lived upon smaller incomes; their homes were very happy; they brought up their children, and so on; and I do not think they were subjected to the temptations they are now. Things are very different now; the country has grown very rich, and people live very luxuriously, and ladies and men who in those days would probably be earning their living, are now on the racecourse and betting on horses, and things of that kind, and I think things have changed.

1556. Was not the idea of marriage, taking for better and for worse, a more real notion than it is now?—I know my father and mother were most devoted to one another. They had nine children. You can judge from that. I suppose they had feelings in those days.

1557. But look at the matter—not personally?—I do not think it is fair to press me on such a subject. You know what my age was at that time. I was then beginning to study law.

1558. I have left the condition of things 50 years ago, but I thought as a man of the world who has had a great deal of experience of it, you might be able to tell me whether the feeling of the permanent nature of the marriage tie is increasing or decreasing?—I do not think it is increasing and I do not think it is decreasing. I think people marry and live very happily together and have their children. There are certain exceptional cases where the woman probably is subject to much temptation and the man also; they are few you know. If you take the population of this country it is absurd to talk about it.

1559. Now about the separation orders. Under the stress of the questions from the Commissioners on my left you have rather given up the stipendiary magistrate?—Well, when I thought of the subject, I could not tell whether there were a sufficient number of county court judges to do the work throughout the country, and therefore I suggested that the stipendiary magistrates, who are of course barristers and competent men, might do it.

1560. Can you tell me at all from your experience the relative view that the poor take of a county court and of the police court—a stipendiary?—I should say the greatest respect.

1561. But do you think that the poor, at any rate of London, regard the police court magistrate rather as their friend?—I think they are their friends.

1562. Quite so. That is the way the poor regard them?—Yes.

1563. On the other hand the county court is regarded rather as a place where money is recovered and debts have to be paid?—I do not say where money is recovered, but where orders for recovery of money are made.

1564. But the poor do not go to the county court judge for help and advice in the way they do to the police magistrate?—I think they do go, and the judges are very kind to them.

1565. Is not your experience that the police court magistrate is very largely regarded by the poor as their friend?—Yes, I agree with you, Sir Lewis.

1566. Now you have made a severe criticism which, if I may say so, I do not deprecate at all, upon the country benches of magistrates, and you lay stress on the fact that they are not lawyers?—Yes.

1567. Is it not the fact (I do not know whether this will affect your view) that the law in the country police court is laid down, not by the bench at all, but by the clerk to the magistrates?—Perfectly correct.

1568. And the magistrates themselves are much more like a special jury?—No; the magistrates' clerk may tell them the law, and would if they asked him, and probably he would not unless they did; but the question of fact is determined by the magistrates and not by the magistrates' clerk; otherwise you might have the magistrates' clerk and no magistrates at all.

1569, But I suggest that in the ordinary country bench the magistrates having taken the law from their clerk really act more like a special jury?—I would not say that; they act like judges. Not only have they to find the fact but to give the sentence.

1570. It is not your experience that they generally take the sentence, too, from the clerk, and ask him what is the usual thing?—Well, I am happy to say I have not been before a country bench yet, and I have not received a sentence.

1571. Now you talk of the extraordinarily wide jurisdiction which is left to the magistrate in these separation orders, with regard to the wife's adultery?—Yes.

1572. As a matter of fact, in practice, that particular side of things does not come up very much before the magistrates, does it? I mean the defence ——?—I should say that in many cases the husband, bad as he is, and who has treated his wife cruelly, who has obtained a judicial separation against him, and to whom he has to pay alimony, would be only too delighted, directly his wife committed adultery, to get free from the payment of this money.

1573. Are you speaking from experience or from your view of what is likely to occur?—I am speaking from my view of what is likely to occur.

1574. With regard to the inconsistency you have pointed out of adultery if proved after an order has been made, that the cruelty of the husband then will not enable the wife to keep the order standing; is not the answer to that this, that after the order is made the parties are separated?—Yes.

1575. And therefore it is not necessary to put into the Act the same provision that is put in where the wife is in the first instance applying for the order, namely, that the husband must not conduce to her adultery?—But why is she separated?

1576. Under an order?—But why?

1577. Because the justices have made an order?—But why? Because the husband has treated her with cruelty or deserted her?

1578. Yes, and at that date, apparently ——?—She is bound to be living apart if she commits adultery after that.

1579. You do not follow me; at the date the order is made *ex hypothesi* no adultery is committed?—I agree.

1580. After that the husband comes and says: my separated wife has committed adultery?—Yes.

1581. And you say she is not allowed to show that his conduct has conduced to it?—I should have thought ——

1582. But that is your point?—Yes.

1583. Is not the answer to that that the adultery occurred after they separated and his opportunity for cruelty has gone?—But he has driven her into it before; he has driven her into poverty and misery, and she has committed adultery. But why I was anxious to state this Act was to show that Parliament had given to these

justices the right to give judicial separations and to determine whether a wife has committed adultery. I think that is a matter very often of inference. I do not think that men who are untrained lawyers should have the right to determine whether there is adultery.

1584. Now, one general question, and that is all I want to trouble you with. You have made a great many suggestions, all based on the bad effects of the present law with regard to individuals?—Yes.

1585. Hardship to wife, and so on?—Yes.

1586. Have you also considered what the effect of relaxation of the present law would be upon the commonwealth itself, and the general position of altering the feeling of the permanence of the marriage tie, and that side of the matter to which I have referred?—I think I have; because as I tell you I am not in favour of *divorce a l'aimable.*

1587. But the extent to which you suggest relaxations would loosen the feeling of permanence of the marriage tie?—I do not think so at all.

1588. You do not think it would have that effect in the country?—No.

Adjourned for a short time.

1589. (*Lord Guthrie.*) Sir George, may I ask, have you suggested anything for which there is not a precedent in some other country, as far as you can recollect?—No; there is always a precedent in every country.

1590. In your view the needs of the community would not be met merely by judicial separation, without divorce?—No.

1591. I put this question to Sir John Bigham, and he said there was a substantial number of cases where divorces, in his opinion, were most desirable if not necessary in the interests of the spouse and the children. He would not say if there were many or not. What do you say to that?—But for what offence?

1592. Cases where mere judicial separation would not serve the ends of justice?—Yes, I am strongly against judicial separation; I think it is a most odious form of punishment to a wife and to a husband.

1593. Then in the ordinary case of matrimonial wrong would you say a divorce is a proper remedy, and not separation?—That is my opinion.

1594. In whose interests, Sir George?—In the interests of both parties, and in many cases in the interests of the children.

1595. And of the State?—And of the State. They can marry again and they may have children.

1596. In your view is it a very serious matter for the State to have any system which leads directly to the production of bastards?—Certainly.

1597. They are very seriously handicapped in the whole race of life?—Yes.

1598. Suppose your suggestion was given effect to, would you expect, as some people seem to think, a great rush to the Divorce Court?—No, I do not think so.

1589. Have you found in your experience that women (taking the case of women) are ready on small provocation to rush to the Divorce Court, or are they very long-suffering?—I should say, certainly not on small provocation.

1600. Have you found them, in cases with which you have been connected, where you thought in their own interests and the interests of the children that they ought to apply for divorce and they would not?—Well, I cannot say that, but allow me to say I have never had either a lady or a gentleman before me who wanted to take divorce proceedings that I did not quietly and kindly discuss the matter with him to see if there was a way out of proceedings, particularly where there were children; and I have sent them to talk it over with their mothers and fathers and relatives and friends, and to come and see me after all that has taken place. I have done everything I could. Recently, there was a case where the petition was filed and the defence put in and it was agreed that it should stand over for two years to see if the lady would become reconciled to her husband. At the end of that two years, when she said she would not, I asked the solicitor on the other side to bring her to me, and I had her husband in another room, and I talked it over with her for half an hour to try and persuade her to reconsider the matter, and so forth, but she was relentless; she would not see her husband; and the end was a deed of separation. But I have always taken very great care not to hurry people into litigation; I know how serious it is.

1601. I understand you approve in certain respects of the system we have in Scotland. Let me understand in which respects. You approve of our allowing divorce for desertion?—I do, strongly.

1602. Either to husband or wife?—Certainly.

1603. Now we use the expression with regard to desertion that it must be malicious?—Yes.

1604. That is to say involuntary?—Yes.

1605. And permanent?—Yes.

1606. Determined?—Yes.

1607. You approve of that?—I do. The only difference between your law and what I approve of is that the term should be two years and not four years.

1608. I quite understand. In your view is desertion as truly a matrimonial offence as adultery?—Certainly I cannot conceive anything worse.

1609. The two essential elements of married life being first permanence and secondly exclusiveness?—Yes.

1610. In desertion the permanence is gone?—And the protection of the husband by living with his wife and associating with her.

1611. Let me ask this. In Scotland in a case of desertion we require that during the four years the deserted wife shall swear that she was willing during the whole four years to go back to her husband. There is great difference of opinion whether that is right or wrong. Would you, as a condition of a deserted wife getting divorce, make it obligatory that she should swear that during the whole four years her husband had been away she had been willing to adhere to him?—No, I would not. I may say I admire your laws very much, but I do not go as far as that.

1612. I agree with you, but there is a great deal of difference of opinion. Then, next, with regard to equality; I understand that you approve of that?—I do.

1613. In your experience, in England, do you find, either with judges taking a case alone or with judges with a jury, that where the adultery of the husband is clearly proved they are very quick to see desertion or cruelty?—I am in favour of trial (I know you do not have it) by judge and jury. I think 12 men with ordinary common sense who hear the whole of the evidence do not take a narrow view; they take a generous view of whether the woman has been treated with legal cruelty; and I should sooner take their verdict than I would take the verdict of the judge. It is a verdict of 12 men instead of the verdict of one.

1614. But do not you find that whereas the law in the case of the woman is that there must be not only adultery but cruelty or desertion, juries, if they think adultery is clearly proved, do not, in point of fact, apply their minds at all to what the judg esays, as to cruelty or desertion?—I think if a lady comes into court and tells a very disastrous case of her married life, there is no doubt that great sympathy is raised in the minds of the jury, and it goes a long way in making up their minds as to whether there is or is not cruelty. I think it is quite likely the jury take an equitable view of the position of the two parties.

1615. But would not you go further and say the jury rather apply the law as it ought to be instead of as laid down by the judge?—I have often wished to be in the jury box to see what the views of juries are, but I never have, so I cannot say what their views are.

1616. Then in Scotland we have free access for the poor. You approve of that?—Certainly.

1617. I suppose it may be, looking at our small area, and the mass of the people being very near Edinburgh, the remote parts being thinly populated, that that is not the same with regard to England, but is that, in your view, likely to be a very large question from the point of view of costs in England, apart from solicitor and counsel?—Yes, I think it is a very important question, because it is not only the costs of

taking a working woman or man away from her employment two or three days, and, it may be, losing it; he ought to be able to give evidence on the spot.

1618. Is it your view that any case involving such consequences ought to be prepared by a solicitor and dealt with by a counsel?—Are you alluding to the poorer classes?

1619. Yes?—I would give audience in the county court to a solicitor or counsel as it now is. You must not forget that very likely though these people are often poor they may have relations much older than themselves who have a little money put away in the savings bank, and so on, who would perhaps part with enough to instruct solicitor and counsel if they are merciful as they ought to be.

1620. In Scotland we do not allow affidavit evidence in any circumstances. What do you say about that?—I cannot conceive such a suggestion being made. Affidavits are allowed where an officer is in India on service, to prove his marriage, or where a witness is going abroad, and the evidence would be lost unless it was taken by deposition; but the notion of judging a divorce case upon affidavits that are taken in a county court and sent up to the judge who sees nothing in connection with them—I cannot conceive such a thing. One witty judge did once say, "Truth sometimes outs even in an affidavit."

1621. What do you say to the other proposal, that the evidence should be taken locally (examination and cross-examination) and reported to London for decision of the London judge, who has not seen the witnesses?—With the greatest respect I should call it a farce.

1622. You think it is of vital importance that the judge trying it should see the witnesses?—Certainly; every judge sees witnesses in every case; and in divorce cases, where feelings run high and the temptation to commit perjury is very strong, it is absolutely essential that the judge should see the demeanour of the witnesses; but I do not see how that could be done in the case of poor people; they have not the means to do it; and that is why I am so strongly in favour of the county courts being entrusted with that duty.

1623. Except in cases where the witnesses are abroad?—Oh, of course, then a commission must issue to examine the witnesses. The witnesses will not come to England.

1624. Then we have power (though we never exercise it) to prohibit the remarriage of the guilty spouse with the paramour. Do you agree with that or not?—No, I do not.

1625. In whose interest do you not approve of it?—I think if a wife is free—if she has been divorced—she has a right to marry whom she chooses.

1626. And in many cases it may be very desirable that she should?—I think so, too. I think her name has been mixed up with this man's, and probably they are deeply attached to each other, and I think it would be a monstrous thing to say that they should not marry.

1627. You have referred to collusion, Sir George. Would you kindly define what you mean (we have had so many definitions) by collusion?—Well, I do not know myself what the learned judge referred to when he spoke of collusion in the Divorce Court. I think that up to the time Parliament passed the Act enabling a petitioner to get desertion by writing a letter to the husband and getting his answer that he does not intend to return—I do not think there was collusion; there may have been now and again a case, but if there was, it is very rare, indeed. Take the case of the intervention of the King's Proctor, for instance.

1628. But take a case where there is perfectly good ground for a suit, and the parties come together and arrange that there being a perfectly good ground there shall be no defence. That may be called collusion. Do you see any great harm in that?—None whatever. If a man is guilty or a wife is guilty, I see no wrong in her saying to her husband, "I shall not defend this case."

1629. Of course if there is no good ground, and they make an arrangement to put forward a false story, that is fraud?—Oh, of course; that is a conspiracy to defeat the ends of justice—a criminal offence.

1630. Then the third is this: where there is no good ground at the time, but that they arrange one of them shall do something which will produce good cause. That of course is entirely wrong?—Of course it is entirely wrong.

1631. Have you seen, yourself, any case where you could say that had been seriously proposed?—No.

1632. So that if recrimination were abolished you would not expect that there would be many cases of collusion in any sense of the word?—Certainly not. I think the moment you make divorce easier and more equitable, the less likelihood is there of being collusion between the parties—there would be no reason for it.

1633. Now, as to jurisdiction? We are troubled in Scotland with you English people who cannot get divorce for desertion coming and pretending you have settled in Scotland and become settled there. Have you any difficulty in Irish people doing the same thing?—I did have one case.

1634. It is not common?—It is not common.

1635. Did it go through?—Yes. Mr. Justice Lopes came into court ——

1636. (*Chairman.*) But a result of that case was a rule passed lately in that I was instrumental in passing that the parties should swear to their domicile?—Yes, and the House of Lords granted it later on.

1637. They confirmed the divorce?—Yes, but I do meet cases where men who want their wives to return to them after adultery go to France and take a French domicile and say to the wife: "Unless you come back to "me I will divorce you in France for desertion."

1638. (*Lord Guthrie.*) Taking lunacy and crime together, is it your view that these should *ipso facto* afford a ground for the husband or wife suing, or that it should be in the option of the judge to determine in the circumstances whether it is fair that that should be allowed?—That what should be allowed?

1639. Divorce for lunacy and crime?—No, I am in favour of giving a right.

1640. Absolute?—Absolute, without any intervention of the judge. With the deepest respect to the judges, people are quite competent to form their own opinions as to whether they should do this, that, or the other.

1641. You are keeping in view that lunacy stands by itself, in so far as it, being an act of God, is concerned, and all the others being voluntary. Do you think that makes any difference?—No.

1642. Of course, in many cases it is the result of bad habits, but you do not think that should make any difference?—No, I do not think so. It is very unfortunate and very unhappy. I cannot imagine that anybody should think that a man or woman becoming a lunatic after a few years of marriage—either from his own fault or not from his own fault—that either the husband or the wife should be chained to a raving lunatic for the rest of their lives.

1543. You have not mentioned habitual drunkenness in the sense of such drunkenness that no self-respecting woman would live with a man?—It is a very difficult subject.

1644. What is your view?—My view, as I have said, is to release a woman from such a state of things.

1645. *Ipso facto*, or by the option of the judge?—No, *ipso facto*.

1646. (*Mrs. Tennant.*) I gather that you disapprove so strongly of the present law relating to separations that you would repeal it?—Certainly, I would.

1647. And you would re-enact any provision which is approved in a revised divorce law?—Certainly.

1648. Therefore your recommendation that the county court judges should have jurisdiction in divorce would mean that they should have jurisdiction in divorce embodying the old separation cases?—Certainly.

1649. Involving a very great number of cases?—Do you mean in cases that have happened before an amendment of the law?

1650. I mean do you feel you must add the present number of separation cases, which I believe amount to 7,000 a year, to the number of divorce cases, and assume that the county court judges would have that total to deal with?—I am afraid the Legislature would not make these retrospective.

1651. No; I am thinking of the amount of work that would fall to the county courts to do. Would it be on the basis of the separation cases?—They would all be divorce cases if the law be amended.

1652. But do you think you would have as many divorce cases under the revised law as you now have separation cases?—Oh, it would only be a guess.

1653. I am trying to arrive at what your opinion would be ——?—If you will tell me what you think of it, I will tell you whether I agree.

1654. I am trying to benefit by your opinion. I am trying to arrive at whether you think the county courts would be capable of overtaking additional work on that basis?—Oh, certainly.

1655. Because on Saturday, when we were discussing this matter, I put a question as to the capacity of county courts taking the separation cases?—Yes.

1656. Well it would apply equally to divorce cases in your revised law?—Yes.

1657. Because separation cases would become divorce cases?—Yes, I think the county courts are perfectly competent to hear all the cases that may occur.

1658. As a matter of time do you think they would manage to overtake the number?—Oh, yes, certainly.

1659. Then you have heard the suggestion that either of the two judges in the Divorce Court should visit certain districts in order to give greater facilities to the poor, or that the number might be increased to three, and that the third judge should give help in another court. Do you think that would enable the number of cases to be overtaken?—Certainly not. I think the judges have quite enough to do in London, and as to sending them on circuit to hear these cases I think it would not work at all. Besides which these judges would go once in six months and a litigant would be kept waiting six months before the case would be heard, and six months more before the decree could be made absolute, which is twelve months; whereas now she can go to the county court and have her case heard properly in ——

(*Judge Tindal Atkinson.*) Three weeks.

(*Witness.*) Three weeks. Why should she wait?

1660. (*The Archbishop of York.*) We attach so much importance to all you tell us that I should like to ask one or two questions on your opinions on certain facts. I think you said at the beginning that you agree with the two judges with regard to the five additional causes for divorce?—Yes, I do.

1661. I think it is important that that should not be on record without someone pointing out that the two judges did not accept all the five additional causes. Sir John Bigham only accepted lunacy and habitual drunkenness, and Mr. Justice Bargrave Deane did not accept cruelty or habitual drunkenness?—May I say in my own defence that 27 years ago I published a long article in the "Fortnightly Review," in which I urged all these five reasons for divorce; then in an interview which I gave and which was published in the "Daily Telegraph," on May 1st, 1906, which is nearly four years ago, I gave the same reasons. May I read them to you?

1662. That is for the Commission?—I mean I have not formed an opinion because the judges have formed an opinion.

1663. (*Chairman.*) May we have the article that we may read it afterwards?—Certainly.

1664. (*The Archbishop of York.*) My point was, Sir George Lewis, that you stated that the two judges had agreed to these additional causes. That may be put on record?—Your Grace, I follow; I was wrong; I agree I was wrong.

1665. You said your experience had been mainly in this matter amongst the wealthier classes?—Yes.

1666. You have not had experience of the working of matrimonial disputes among the working classes, or the poor?—No, I have not, but I have had cases brought before me—pitiful and shocking cases—where I am certain the wife would have been forced into a bad life, and I have out of my own pocket got divorces in many cases for poor people under such circumstances, but they have not been working people; they have been girls who have been getting their living at theatres as choristers or as dancers, and so forth.

1667. In the main we may take it you have in mind rather exceptionally hard cases rather than any wide number of cases?—Yes, I know nothing about the cases of the poor although I am in deep sympathy with them.

1668. Would you be in favour of transferring the whole jurisdiction with regard to matrimonial causes at present remitted to magistrates to the county court?—To the county court, I would. That is my view.

1669. Your view is that what is now under the Act of 1895 done by magistrates had better be done in the county courts?—I think so.

1670. Quite apart from any possible extension of divorces?—I think so. I would leave to the magistrates under that Act a power to punish a man for assault and cruelty upon women because the county court judge has no power to do that; but short of that I would leave all the other powers to the county court judge.

1671. Then just a word about the additional causes. We use the word collusion. I am afraid some of us who are lay folk in this matter may not be always meaning by collusion what lawyers mean. Would it be right to say that there are two senses in which we could use the word collusion; one the technical, legal sense of evasion of the law; the other the more moral sense of mutual consent to do acts which would be causes of divorce?—Well, I cannot divide them. I think if two people conspire together (husband and wife) to put a false case before the court then I call that collusion.

1672. But it may not be false if the acts that would justify the divorce have taken place by mutual consent. The acts would be true; they had been committed?—Oh, you mean where a person would be entitled to a divorce?

1673. Yes.—And is not willing to take it, and they conspire together to ——

1674. No, I mean, where persons agree mutually they will afford grounds of divorce?—Then I should say that is wrong.

1675. And you would call that collusion?—I should call it collusion—yes.

1676. I ask because you said the only collusion you knew of was collusion induced by the Act of Parliament to which you referred?—Yes, and I adhere to that. The collusion to which your Grace refers may occur once in a blue moon, I mean it may occur two or three or four times in a year; but to talk of that as judges having to sit there and watch the witnesses with reference to collusion, and so forth—I do not understand it. I do not think there is collusion in the Divorce Court.

1677. When we heard from an eminent judge that he was satisfied that there was collusion in a large number of cases although it could not be actually detected, you would say that is not your experience?—No, that is not my experience, and if there is collusion I do not see why the judge should not discover it, and I do not see that it is collusion because he suspects it. I do not believe there is collusion in the Divorce Court.

1678. Then with regard to lunacy; you have spoken about persons being—to use your words—chained to raving lunatics?—Yes.

1679. Obviously, that is an extreme case, but there are cases of lunacy which would not justify at all such an expression; cases of intermittent, but continuous, lunacy, and cases of comparatively harmless hallucination. How would you distinguish?—Well, I think that is a medical matter which medical men must determine. If you take every possible precaution, and a lunatic has been two years confined, and the superintendent and three doctors certify that he is insane, I cannot see that there would be any doubt left.

1680. Would you restrict it then to cases where the lunatic is under confinement?—No, I would not, because it may be he is confined in a doctor's house. Under the Lunacy Laws you may put a patient in a doctor's house and not in an asylum if the Commissioners would allow it, which they do.

1681. If a man were married to a woman who was feeble minded to such an extent that she was quite

incapable of conducting her own affairs, would that be lunacy such as to justify a divorce?—No, I do not think it would. It must be an absolute loss of the mind, in my opinion. I mean a feeble-minded person would not come under that category.

1682. Still there would be left considerable discretion even for the judge?—Well, your Grace knows almost better than I do the changes in these things. A person may recover or may not recover.

1683. Would you extend it as a ground of divorce that a man should find himself mated to a person of hopeless nervous debility of a kind which made common residence exceedingly painful and depressing?—No, I would not.

1684. Then with regard to crime. Then again you speak of crime against the laws of the country as if such crimes would always involve, what I think somebody called moral turpitude of an exceptional kind. But you must have come across cases of persons engaged in business affairs on a large scale who have, very often through the fault of others, found themselves involved in legal proceedings and sentenced to penal servitude?—No; may I say, your Grace, that where it is the fault of others, penal servitude does not follow. No judge would pass a sentence of penal servitude—certainly not for a first offence.

1685. Would you extend it to the case that a man should be entitled to divorce his wife if she were sentenced to penal servitude?—Yes, I should.

1686. With regard to the question of habitual drunkenness. I think, I take it from you, that you felt it would be exceedingly difficult to determine what was habitual drunkenness?—Yes, it would be.

1687. That would leave a large discretion to the judge?—Yes.

1688. Then in all these cases there would be, naturally, a certain amount of very responsible discretion to be exercised by the judge?—Certainly.

1689. So that it would not be quite true to say that questions of divorce were purely simple, and that they were questions of fact, if these extensions take place?—But I have not advocated divorce for an habitual drunkard.

1690. I understood you thought so?—No, but I think it is a matter that ought to be very carefully considered by the Commission, but I do not advocate it.

1691. With regard to the others then—desertion and cruelty?—I think those are all questions of fact and there is no discretion coming in at all.

1692. I think you have already indicated that with regard to lunacy there would be a large discretion?—No, you spoke of the feeble minded, but I do not think they come under my idea of lunacy. I say if the fact is established that for two years a man or a woman has been a lunatic and there is a certificate from three doctors and the superintendent that that lunacy is permanent, I say that then the judge should give a divorce. I do not say there is any discretion in it at all.

1693. Would you be in favour of a definition of lunacy for divorce?—Oh, I think we all understand lunacy.

1694. I wish I had that clear understanding?—I think you understand it better than I do, your Grace.

1695. There is only one other question, on the important point of publication, where your evidence would be of great importance. You said strongly that you felt that publication of the facts acted in no sense as a deterrent?—No, I do not think it does.

1696. And one of your reasons for objecting to publication is that it is painful to relations?—Yes, I think publication does more harm than good.

1697. Is it not the case that the fact that relations might come to know about certain facts if they are brought to light—does not that act as a deterrent to many people. The fact that they think that their relations can read in a newspaper what is going on is a very real deterrent to some?—I think without any real publication the fact that the matter may come to the knowledge of the relations is a very serious matter. I have hardly ever known a lady who has come to me where she is accused of adultery who has not said: "Oh, what will my mother say, it will kill her," and so on.

1698. I should say that the inference from that would be that publication would act as a very real deterrent?—But she would know it before any publication. I do not see why the details should be published to all the world. She has to suffer enough as it is.

1699. Would you modify your view to the extent of thinking it might be of some advantage if the judge's own summary of the facts were published together with the pleadings?—I should not object to that certainly not.

1700. (*The Earl of Derby.*) You mentioned lunacy, Sir George, as being one of the causes for which divorce might be given, and I think you mentioned two years?—Yes, I did.

1701. During that two years, would you give it if the petitioning party had himself or herself offended againt the matrimonial law?—Would I what?

1702. Would you give a divorce for lunacy if during that time the petitioning party had himself or herself been guilty of some breach of the matrimonial laws?—Yes.

1703. You would?—Yes.

1704. Now you said cruelty was a question of fact. Have you never had any difficulty in advising a client as to what was cruelty from the fact that there had been a divergence of opinion among the judges?—Well, of course, there is physical cruelty and moral cruelty. There is no difficulty in the question of physical cruelty, where a man beats his wife, but moral cruelty (the learned Chairman remembers cases that have come before him), where a man refuses to associate with his wife, passes her in the street, refuses to take his meals with her, will take his meals down in the kitchen, refuses to write to her or go out with her, and tortures her in this way till her health is absolutely ruined, as proved by medical evidence; that is held to be cruelty, and I think properly held to be cruelty. There are cases that have been reported; I can hand you this book and show you reported cases.

1705. But you must have known cases where the jury in one case have allowed it is cruelty and in an almost precisely similar case they have not allowed it?—No, I do not say that.

1706. Then cruelty can be very clearly defined?—It can be clearly defined, and it can be clearly refined cruelty.

1707. In cases with which you have been connected, have you had many cases where ladies have come to you as petitioners and have been able to prove the adultery of their husband perfectly well but at the same time you have not been satisfied that there was sufficient cruelty for them to get a divorce?—Oh, hundreds.

1708. Hundreds of cases where the woman petitioning would have got a divorce if they were on equal terms with men?—Yes, certainly, and would have got a divorce if you could have established cruelty.

1709. In those cases I suppose sometimes a woman has gone for a judicial separation?—She has, of course, been bound to go for a judicial separation.

1710. She may drop the case, but she goes for a judicial separation?—Yes, she goes for a judicial separation.

1711. Now have you known in those cases of any cases where, having got a judicial separation, she afterwards offended against the matrimonial laws?—No, I have not.

1712. Then except that she has been tied to the man no harm has been done to her?—No, but then you must remember I used to sit in my office; the case was over and the ladies led their ordinary life, and information was not furnished to me as to what they might or might not do, but it has never come before me where a lady has committed adultery under those circumstances.

1713. The mere fact of a woman —— ?—I have seen them afterwards, or they have come to me about various things, and it has been a pitiful story of the misery of their life and the torture they are suffering, and so on. After all you must take into consideration that the lady has suffered a gross indignity, and so forth, and I think most ladies have much too great

self-respect to go and commit adultery because their husband has.

1714. But where a woman has not been able to get a divorce, but only a judicial separation, do you think that has conduced to her own immorality eventually?—I think in some working people, or some women probably in a lower position in life, pinched by poverty, they may have done so. I dare say they have, but I have not had a case before me.

1715. Have you ever known cases where a man and a woman have got a judicial separation one against the other, and afterwards come together again, and lived together?—I do not remember any, but I think it is possible.

1716. Then you do not think there would be any great danger if there was a judicial separation made between husband and wife, and at the end of a certain number of years there should be a decree made?—No. I do not quite appreciate your question.

1717. To prevent anybody bringing an action for divorce in a moment of impulse, I only want to know whether you think there was any harm in their having a judicial separation for, say, two or three years, and if, after that time, they did not come together, that there should be a decree for divorce?—I do not see any reason why a woman should be made to suffer for two or three years if justice entitled her to a separation. I do not see why she is to wait.

1718. I quite agree that she gets a separation at the moment, but not a divorce. But say she gets a judicial separation, then would you be prepared to say that, after three years, the husband and wife not having come together, the petitioner should have the first decree made into a divorce?—No, because I am in favour of her having a divorce at once. If she gets a separation, and that is either for cruelty, desertion, or adultery, I am in favour of her having a divorce at once for all these things, and I am against waiting two or three years.

1719. (*Sir George White.*) We understand, I think, that you are in favour of absolute uniformity as between the sexes?—I am.

1720. Then, with regard to separation cases, would you say that where a judicial separation is now justified on account of the cruelty of the husband, or the other way, that a divorce would be better than a judicial separation?—Certainly. I hope I have given my reasons earlier in the day.

1720*a*. Of course you are aware that in a case of judicial separation a very great number of them come together again?—Not to my knowledge.

1721. Well, as far as my experience goes, as a magistrate, I think there are a large number that come together again?—You are speaking of the very poor?

1722. Yes, the separation cases?—Yes, I dare say they do, but why? If they were allowed to have a divorce with the prospect of re-marriage they would not go back to the life they had been living before.

1723. Well, under those circumstances you would think it better they should get a divorce straight off?—Certainly.

1724. Than that there should be a possibility of their coming together again?—Certainly. I hope nothing I have said about the magistrates has hurt your feelings at all.

1725. No, not in the least; but as a matter of experience I think magistrates will say there are a great number of cases that come together again?—No doubt.

1726. And it occurred to me that by divorce you could actually prevent that taking place. Whether it is desirable or not is a matter of opinion. Then with regard to a case of penal servitude for five years: of course you are aware that those sentences are very often reduced by a year or a year and a half?—Yes, they are reduced by three months every year for good conduct, so that 15 months would come off the sentence of five years.

1727. But you would still hold that five years would be the time?—Yes, because it shows the nature of the offence for which he has been convicted.

1728. (*Mr. Spender.*) May I ask you one or two questions on your view of reporting? I think you said that there was no evidence that the publication of reports had a deterrent effect; I think you said a greater deterrent effect?—I do not think it has any deterrent effect.

1729. There has been no time since the Divorce Acts in which the courts have been other than public?—No.

1730. They have been public throughout?—Yes; everybody can go in and hear for himself.

1731. So that we have no means of measuring; we cannot say we have had a period when there have been no reports and a period at which there have been reports?—No.

1732. There have been reports all the time?—That is quite accurate.

1733. You would not say that the fear of exposure in the newspapers is not a factor that weighs with the parties?—No, I think not.

1734. You think it is not?—No, I do not.

1735. You would not deny the great pressure that is brought to bear on newspapers and newspaper editors to keep out these reports?—Oh, no; there is.

1736. Does not that show a fear?—Well, the fear that the relations and friends shall read all these details. People have prayed to me to try and use every influence and are willing to pay money to keep reports out of the newspapers, and it is painful to see them in the newspapers, painful to themselves, painful to their children, and painful to their relations.

1737. But it is equally painful to see reports in a great many cases affecting character in newspapers?—Certainly. I agree.

1738. Is it not difficult to draw a line? It is not only a question of matrimonial morality or one particular kind of offence. Is it not, broadly speaking, a question of character, and might not the some argument be used in a great many cases if it is a question of offending friends or relations?—Well, I see cases reported headed: "Theatrical divorce case"—some little ballet girl. What is the meaning of that except to sell the paper? I do not see it in the "Westminster Gazette," remember!

1739. But still, is it not equally hard for the clerk who has been guilty of a petty defalcation to find himself in the paper?—Yes, I agree it is.

1740. And can you draw a line in respect of the general principle of publicity?—I think, Mr. Spender, that any report that was submitted to you to go into a newspaper would be beyond criticism; I am perfectly certain of that; but then, you see, they are not submitted like that. In fact, in some instances, these very nauseous statements are an encouragement to people to buy the paper.

1741. I do not wish to question that. I am only trying to get at the remedy and see if the remedy is not worse than the disease that we are complaining of. I am trying to get at a line, if we can draw a line, between ordinary offences and matrimonial cases, because there are two points, the question affecting character and the effect on the public of reporting matrimonial cases. You say no publication, but I do not quite see the line to be drawn, and you allege grounds which it seems to me might be alleged for almost any offender we get into the police court or a law court for any circumstances?—Yes, but there it is a crime; a man has stolen something and it inflicts no injury on the modesty of people. Young girls do not read those things, but there is the temptation to read the Divorce Court reports. The best proof of it is that all the principal part of a newspaper is usually given—the front part of it—"Society Divorce Case," and all the details given at full length. Well, it is very objectionable.

1742. You would carry it a little further, I suppose, and you would say that this rule would apply not only to the Divorce Court, but to all courts that raise issues of a similar nature?—But they do not; police courts do not.

1743. But there are cases that raise similar points?—I see in some cases where an extraordinary crime has been committed, they just state the fact—the particulars are not published.

1744. That is the case with a great many papers with regard to the Divorce Court?—I think if you begin to report the divorce cases you cannot stop; all the other papers report them the same, and unless they all agree together not to do it I cannot see how you can stop it, because it is not fair to one paper or fifty papers conducted with the greatest cleanliness and prudence, and so on, to allow other papers of a lower class, or not such a high class I ought to say, to publish the details and sell their papers through the street and everywhere. People naturally say, "What is the good of buying such and such a paper, "there is no report of this case in it." It is damaging the paper.

1745. That I am not questioning. I am only wondering what is the best remedy, Sir George. Might not we carry it further and say also questions of public justice are raised in the Divorce Court?—I cannot see that any question of public justice could arise.

1746. Cannot you imagine a case of a co-respondent who would wish to be vindicated by a public trial? Do not you think it might be fair or very important that he should have a right to public trial if his character were challenged?—I think if anybody's character is challenged, as far as my experience goes, my advice has always been to leave it alone. You do not want the newspapers to report all sorts of things that are not true. After three or six months, things go so quickly, people do not remember whether he was acquitted or convicted.

1747. There may be cases in which a man may not think that. It may be the man's view?—I would answer your question with pleasure, but I have not met anybody like that who wants to go into the court and have all stated in court for the purpose of being acquitted. He is only glad to have it withdrawn at once.

1748. One other point about that separation order question. I think I understand from you that you wish to abolish separation altogether?—Yes.

1749. Would you object to granting a judicial discretion to give a temporary separation which might or might not end in a divorce—a discretion if the judge thought there was a possibility of reconciliation?—I would not. I think if a person is entitled by law to have a certain remedy, I do not see why any judge on a question of discretion should withhold it.

1750. Then you do not attach any importance to the schemes of reconciliation put before us?—If somebody owed a large sum of money you would not leave a judge to have the discretion to say whether he should have 12 months to pay in. Though I am not against a trial of reconciliation, I think it is almost an impossible thing. I mean, if the proceedings are to be taken in London, are these poor people to be brought up to London to go before the judge for him to talk to them, and to see if they are inclined to be reconciled. And at whose expense have they to come up? Very likely it will be a nice holiday for them, and they would be very glad of the opportunity of spending two or three days in London at somebody else's expense. And supposing the offending member would not come up to London; is a policeman to be sent to bring him to London or a commissionaire, and if he will not come to London what is to be done? I cannot conceive such a state of things. I can imagine a state of things when a judge in the county court may have some influence—I think very slight influence—to induce people to reconsider their views, and if they do so well and good; but before people take these proceedings they see solicitors and solicitors give them good advice and help, and try to bring them together, and they have their parents and relatives who also do the same thing. I cannot see how it is possible to pass any law ordering the judge, or these people rather, to be brought to London before a judge when they file their petition, to see if they can reconcile themselves one to the other. I think, subject to correction, that is a system of reconciliation which existed on the continent, or in instances where there is *divorce à l'aimable*, where they both agree to have a divorce. They go before the judge, and the judge talks to them and sees what he can do, and says: Well, you must come in six months. At the end of that six months they come again and he says: You must come in another six months; and then he talks to them on another occasion and he says, you must come in other six months; and two years expire in that way, and I suppose probably they have not changed their minds at the end of the two years; but where the husband or wife has committed a definite offence, I do not think that even abroad they attempt a reconciliation. It is only in these cases where parties cannot agree, but neither of them has committed any matrimonial offence.

1751. (*Chairman.*) There is a question or two suggested to me by some of the Commissioners. Would you see any objection to the judge having power whenever he thought fit to attempt a reconciliation at an early stage of the case?—I do not object to it.

1752. You do not think it would lead to any advantages, I gather?—No.

1753. Because you think it is only applicable to cases where there has been power to dissolve by consent?—Yes, I think where the wife or the husband want to forgive one another they do it and remain together. They do not take proceedings at all, and it would not be before the judge at all.

1754. One other point I am requested to ask you. Would you propose to adhere to or abolish the rule nisi of six months?—I think if the case is established the parties should be free.

1755. At once?—At once. You see in a contested case it very often takes 12 months before it may come on, sometimes even longer before it may come on, and then they have to wait six months.

1756. Then what opportunity would the King's Proctor have of intervening?—I think the King's Proctor must intervene, if he has any evidence, before the case is tried, because if the law were changed, and the fact that both had misconducted themselves should be no bar to a case, I do not see what need there would be of him except in the case of a collusion.

1757. The change you think would render his office unnecessary?—Quite.

1758. Then with regard to juries in the county court. Would you prefer to try them before a judge or a jury?—Exactly as in London, I should prefer. When the parties wish to have a jury I would give them a jury. I think the great thing is when people leave a court of justice that they should feel that justice has been done to them.

1759. I think you attach great importance to the judge seeing the witnesses?—Yes.

1760. You do not approve of the suggestion of affidavits?—Certainly not.

1661. Then with regard to the county court work. The number of plaints on the common law side entered were 1,315,141, so that assuming these cases of separation were divorces, 7,000, or whatever it is, would not add a very large number?—I am not speaking of arrears but of the future.

1762. No, but I mean if you add the 7,000 cases which are heard before the magistrates they would be added to the 1,315,000 plaints. It is a very small proportion?—Yes, but you must remember the judges might set aside one day a week to take divorce cases.

(*Sir Lewis Dibdin.*) Would not you compare the plaints with the 7,000 separation orders made?

(*Chairman.*) Yes, I see what you mean—the amount of actions for trial 1,400,000.

(*Sir Lewis Dibdin.*) Orders made.

(*Chairman.*) No judgments on hearing 434,000, and without hearing 413,000. But even on that it is a very small proportion.

(*Sir Lewis Dibdin.*) It is only to get the statistics right.

(*Chairman.*) Quite right.

(*Witness.*) Most of the cases are undefended, and I have no doubt most of those cases would be undefended, and I see no difficulty.

1763. (*Chairman.*) Assuming you found the judges had too much work, I presume your remedy would be to increase them?—Yes, to appoint further judges.

1764. Then one point about publication that has not been put to you. Would you tell me what your

views about this are. It is suggested that publication has a deterrent effect, and you have given your opinion about that?—Yes.

1765. I ask this because I have some proofs which deal with it. Is there any ground for suggesting that the thought of publication of proceedings has been used improperly in cases; that is to say charges have been suggested against a person with a threat of publication, the charges themselves, in fact, being quite unfounded?—I cannot say that any have come before me. At the same time I think the Divorce Court is the greatest court for blackmail I have ever known.

1766. Do you include in that, as an operative power, that threats of publication are on facts not founded?—Yes, I think it would be monstrous. A man meets a woman casually—a married man. He ought not to do anything of the sort, but he does; and he is followed the next day; a man calls on him and says, "I am the "husband of that woman; if you do not give me 500*l.* "I will file a petition for divorce." I have had many of those cases before me, and the result is you have to give it, if the man is in any position of life, and he thinks he has got out of it very cheaply, and his wife knows nothing about it.

1767. You mean that is under the threat of publicity if it is not paid?—Yes, I have paid large sums of money.

(*Chairman.*) Well, thank you very much. We have been much interested in your evidence, and I thank you on behalf of the Commission

Mr. Robert Henry Bullock Marsham called and examined.

1768. (*Chairman.*) You are a metropolitan magistrate—a police magistrate at Bow Street?—Yes.

1769. How long have you been such?—At Bow Street?

1770. No, a London magistrate?—I have been for 31 years.

1771. And you have had a considerable experience since 1895 of the separation orders under the Married Woman's Act?—Yes.

1772. First of all I want to ask you have you any view as to the advisability of providing local courts in the country as a means of trying matrimonial cases?—Perhaps I may say one thing. I am only here on my own behalf. I am not here as representing the magistrates as a body. I am speaking my own opinion. I think my friend, Mr. Rose, agrees with me, and he is the only one who I can say apparently agrees with me, because I have not had any discussion at any length with any of them. So I am speaking for myself.

1773. But, I think, your attendance here was through an application to Sir Albert de Rutzen to ask some of the magistrates to attend?—Yes.

1774. And he asked you and Mr. Rose?—Yes, that is how I came to be here to-day.

1775. Now, have you any views to express as to the desirability of providing local courts to meet the difficulties of poorer people?—Yes, I think they ought to be heard in the county court myself, beyond all doubt—I have not any doubt about it. I do not think they ought to be heard in summary jurisdiction courts before magistrates or stipendiary magistrates anywhere—not in any lower court than that of a county court, and I think the county court is the proper place to hear them.

1776. Have you any reasons for giving that opinion?—Well, I think, very strongly, that the witnesses should give their evidence *vivâ voce*, and that the judge who hears them should see the witnesses, as he can decide the better by seeing the demeanour of the witnesses, than he can if the evidence is sent up on deposition, or affidavit, or anything of that kind. I think it is most important myself. I am bound to say I act a good deal on the demeanour of the witnesses. One can tell largely whether one can believe them or not by the way they give their evidence.

1777. Do you think expenses of coming to London does, in fact, debar the poorer classes from coming?—I have no doubt it does. I have no experience myself, but I have no doubt that is so.

1778. You do not think that the courts of summary jurisdiction should have the power to grant divorces?—No, I do not.

1779. Why?—Because I think granting a divorce is a very serious matter, and I think it ought only to be done by a very highly responsible person, and I, also, think that supposing it was given to the metropolitan magistrates, for instance, then it would have to be given also to the county justices and to the borough justices, and I do not think they are competent to hear those cases. A stipendiary magistrate is only on the same footing as an ordinary justice. He does not sit by himself, except in shipping inquiry cases, which he takes by Statute; otherwise he does not hear any case by himself, and he is practically of no more authority than the other justices sitting with him, and I think it would be a very serious matter for the borough justices if not the county justices also—I put them all on the same footing—to hear these cases when there may not be a lawyer amongst them.

1780. Well, do you think the summary court is the proper court to make permanent orders?—Yes. I think the parties are very satisfied with our decisions.

1781. Would you leave that court power to make the order permanent or only for a time?—I think permanent myself. I do not like the temporary orders. I do not think they do much good. People can come together if they please at any time, and they very often do, I think.

1782. You find they do come together again?—I think so. I cannot say so much from my own experience, because I am not thrown so much amongst them, but I have been talking to the missionaries myself about it, and I hear a considerable portion come and live together again—I think it is very likely more on the ground of convenience than from affection. I think that is very likely.

1783. You think, then, it would be desirable to retain the powers to make permanent orders to begin with?—I think so, on the lines they are on now, without increasing our jurisdiction in any way. Now, the habitual drunkards, I think that is very proper. That is acted upon to an extent, and we have power to deal with that, and we can deal with them better than the county court judges could, I think, as we have more experience of that class of people.

1784. Do you think a permanent separation a good thing as compared with the opportunity of obtaining a divorce on the same grounds?—I have had cases where people have applied for divorce and we have said they cannot get it. I have had no experience about that, and I could hardly say if they would be as likely to apply for divorce as for separation orders. Our order is that they should not be bound to live together—that is all—and they can give that up when they like.

1785. Have you formed any opinion as to the operation of these orders for permanent separation; as to whether they tend or not to immorality?—I do not know that they tend much to immorality. I should doubt it myself.

1786. Have you made any inquiries or studied into the result of the orders?—Sometimes I am told that a woman who is separated in that way will take up with a man, or a man with a woman, but I do not think they do it to any great extent.

1787. Have you had any opportunity of following out what has happened afterwards in these cases?—Well, we generally grant a maintenance order at the same time, and then the people come to us to enforce that order if the money is not paid; and it comes before us in that way, and very often some men make up their minds they will not pay at all.

1788. What happens in those cases?—In those cases they can be dealt with the same as affiliation orders; we have power to grant a warrant in the first instance, but the general practice is to grant a summons and then, if the man appears to that we explain that he must pay or he must be sent to prison. We have power to do that as we do in the affiliation orders.

1789. What happens if he does not pay?—If it is wilful we send him to prison. If he is out of work

and we think he cannot, we adjourn the case till he gets into work or is in a position to pay. But if he makes up his mind not to pay, and is living with another woman, we should send him to prison for a time.

1790. Do you find in these cases that he is living with another woman sometimes?—Occasionally. I should say not very often, but occasionally.

1791. Then what happens to the woman if he does not pay and is sent to prison?—Well, of course, she has to apply to the workhouse or somewhere else. It does away with all the money that has accrued up to the time he goes to prison.

1792. She is without livelihood?—Yes.

1793. Do you find that it leads her into temptation?—I do not know that it does. It does occasionally, but not to a great extent.

1794. It leads rather to the workhouse, you say?—I should say so, and charitable people will often assist. If it is temporary, we perhaps help them out of our police court poor box, and that sort of thing; if we think it is really a case where the man would pay if he could.

1795. Then in those cases, where the man will not pay and goes to prison, the wife remains under the order and he remains under the order tied to one another?—Yes.

1796. Would your view be or your experience lead you to think it desirable that in those cases they should on adequate grounds have a complete divorce?—I think so, if it is after a certain time—not a short time. If for some time they have been separated in this way, and he has practically deserted her, and he will not help her, then I do not see why there should not be a divorce.

1797. That would amount to saying that in cases where desertion occurred, with no reasonable prospect of return, you would be in favour of a divorce?—I think so.

1798. Then you have expressed your view in your note about the desirability or undesirability of reporting cases of a matrimonial character in the papers?—Yes.

1799. Would you tell us what your views about that are?—My views are that they ought not to be reported. I think, myself, those cases should be heard privately, without the public being admitted and without the press being represented there. In cases where adultery is alleged, or similar offences—indecent cases of any sort—I have a strong view about that myself.

1800. What is your view based upon?—Well, it is my impression that the more people see details of this sort of thing the more likely they are to be led into immorality. That is my impression. I think it does a great deal of harm. I am bound to say I have always thought the Divorce Act has done a great deal of harm to public morality.

1801. You concentrate it thus in your memorandum: "For the study of the details in the papers by young "women and girls familiarises them with matters which "otherwise might not come under their notice, and "puts improper subjects into their thoughts, of which "they had much better remain ignorant"?—Yes, I think so.

1802. Shortly speaking, you do not think the reading of these cases is good for the public?—I do not think is is good for the public at all myself. I must say I think some of the details that are reported, if they came before me in the ordinary way, we should very likely say they were indecent publications, and should probably grant search warrants and have them brought before us and order them to be destroyed.

1803. Even if the details are not indecent, so as to be improper, and yet are details of disputes between husband and wife, would you still say that is not a proper thing to report?—No, not disputes between husband and wife. I say where adultery is charged, or other acts of indecency are charged, then I would not have them published and not admit the press where they are being heard. Practically it comes to hearing the cases *in camera*.

1804. The last point which you have dealt with in your proof is an expression of opinion on the question of the law being amended?—I do not wish to say much about it. I saw it in the paper—it was the President's opinion about the unanimity of the county court judges. He opposed their hearing them, because he said there were 55 of the judges and you would always get conflicting decisions. That is the case everywhere. There are 25 magistrates here. We may hold quite different opinions. Then all the summary jurisdiction courts in the country; they may all hold quite different opinions. With great respect I would say I have heard it said that even some of the judges do not give similar sentences. I cannot see any reason why the county court judges should not hear these cases, and I would increase their number, if necessary. Then I think the costs ought to be reduced in the county courts. There is no reason why that should not be done, and if necessary I think assistance should be given. Very likely legal assistance might be required, and that should be forthcoming.

1805. A poor man's lawyer sort of arrangement?—Yes, a man ought not to be prevented getting his divorce by reason of his poverty. Then, I think, the appeal certainly ought to be to the Divorce Court; I would not have the appeal against the judges to the ordinary court. The appeal against the separation orders that we make is to the full Divorce Court.

1806. They are to the Divorce Division of the High Court at present?—Yes, but they have generally been taken by the full court.

1807 Only two judges?—That is the full court, is it not?

1808. Yes?—And I think the appeal from the county courts should be to them. I think it is better to go to them with their experience in the matter than to go to the ordinary Divisional Court of King's Bench. Then I think it ought to be mutual between the sexes. I would give the——

1809. But you are going a little too fast. By "mutual" you mean the like remedies to both sides?—Both husband and wife—except, perhaps, in the case where the husband is guilty of adultery perhaps in a single instance. I think if it is a single case—an isolated case where the man has been the worse for drink—it ought not to preclude him from getting his divorce; though continuous adultery ought to undoubtedly.

1810. Now take a single case. Is not that the kind of case in which a man is, as likely as not, to receive some infection which he may communicate to his wife?—Well, I cannot say about that. It may be so, no doubt. That would come under cruelty, would it not, if it is done intentionally?

(*Lord Guthrie.*) That is provided for as being sufficient to infer cruelty from, is it not?

1811. (*Chairman.*) But the point made is that it is not cruelty unless communicated?—If it is done wilfully I think it should be.

1812. I do not know whether you have formed any opinion since this memorandum, in which you say you are not prepared to give any opinion in respect of the amendment. There is the question of other causes of divorce. If you have gone into them I will ask you?—Well, insanity I have. The way I should put it is, that where a person is medically reported to be incurably insane, then, I think, the husband or wife ought to be able to get a divorce; but if it is only temporary insanity—if intermittent and every two or three months the person is rather insane or sun stroke has produced anything of the kind—then I do not think there should be a divorce. But if it is certified by a medical board that it is a case of incurable insanity, then, I think, the marriage ought to be dissolved.

1813. Have you formed any opinion upon the subject of the effect of desertion after a long period, such as the law of Scotland?—Yes, I have doubt about that—just merely desertion. But if it was going on for a length of time I should not be opposed to it, but I am not prepared to say two years. I heard two years suggested and four years. I do not know so much about that. I could hardly express an opinion about that.

1814. The last thing is that you have furnished us with some statistics here which are in the memorandum annexed to your proof, giving the number of orders with alimony in various courts in London?—Yes.

1815. And also the separation orders granted to men for habitual drunkenness of the wife?—Yes.

1816. I may take it those figures are correct?—Yes, I think they are correct. The courts vary a good deal. The centre of London is being cleared out a good deal, and that is why Bow Street and Marlborough Street appear to make so many fewer orders. The houses have been pulled down, and the poorer people have had to remove to a distance. Those are the class that apply to us rather for separation orders. I do not make any myself unless I investigate the case pretty closely. I do not do it straight off because a man or woman apply for a separation; and I always try by talking to them in court.

1817. Do you interpose your good offices as much as possible to effect a reconciliation?—Yes, and I think our missionaries do, and the friends do, but we are not always successful.

1818. You refrain as much as you can from making the order?—I do, but I think we should keep the power to grant the order.

1819. And not limit it to a time for separation?—I think not, myself.

1820. (*Mr. Spender.*) You propose to extend the prohibition of reports to all cases on the ground of indecency?—Indecent cases of any kind, but no others.

1821. Not merely matrimonial cases?—Not the ordinary matrimonial cases where there is desertion and cruelty unless it is of an indecent character, but if it is I would exclude the Press.

1822. In police court cases of all assaults?—Well, if it is what you call an indecent, obscene case in any way, we always clear the court of women and children.

1823. (*Archbishop of York.*) I have only two very simple questions to ask you. Did I understand you to say, in your opinion, the Divorce Acts have done great harm to public morality?—That is my impression.

1824. In what respects?—I think it has familiarised people with these details that are much better kept out of their minds—especially young girls; the upper classes I mean.

1825. By the publication of divorce cases. I thought you said the Divorce Acts themselves had done great harm?—I am bound to say if I had had a word in the matter I should never have been a party to it if I could have helped it.

1826. Could you tell us in what way you think the Acts themselves have done harm to public morality?—Well, we hear a good deal more of these matrimonial offences than we used to do. I cannot say I can go back as far as 1857 with regard to recollection of the cases, but for some years I can speak. I do not think divorces were so frequent as they have been latterly, and I think we get less moral, and I attribute it very much to the publication of the cases in the divorce court.

1827. Then would it not logically follow that any increase or extension of the Divorce Acts would tend to increase public evils?—Yes, but still I think if the rich can get divorces the poor ought to be able to.

1828. But if the Act has conferred little benefit on any——?—But I do not think there should be a law for the rich and a law for the poor. I think the poor ought to be at liberty to get the same relief as the rich get.

1829. Even if the general effect of the Act on the public is bad?—Yes, I think you cannot deprive them.

1830. Then what is the class with which you mainly deal with regard to separation orders?—Well, they are poorish people. I suppose the labouring class, more than any other.

1831. Do you find many of the genuine wage-earning working class apply?—Oh, yes.

1832. But not so much as the labouring class?—No, I think not. What I myself do believe, is that it is poor classes that have come together again; that is because of convenience—that they wish to be together—not for affection, I think. But I think the artisan class and the small shopkeeper class are not so likely to come together again as the very poor.

1833. (*Mrs. Tennant.*) Is your experience, Mr. Marsham, in relation to Bow Street, or in relation to other courts?—I was at Greenwich and Woolwich for 18 years, I think.

1834. But during the last seven years?—The last seven years I have been at Bow Street—it is about seven. I was at Westminster.

1835. During that seven years there have been 32 separation orders?—Yes. I think I have been there all the time.

1836. Have you had, on those occasions, to exercise your power under section 5, requiring the husband to pay the alimony order to some other person than the wife—to an officer of the court or to a third person?—No, I think I have always made it to be made payable to the persons themselves.

1837. On what ground have your separation orders generally been granted?—Well, it is generally, I think, for cruelty, For persistent cruelty we have power to grant an order. Sometimes there is desertion, and we grant a maintenance order.

1838. You have not found it a disadvantage for the wife to go to the husband in the case of a cruelty order?—He is ordered to pay it to her.

1839. But if he does not go to her then she has to go to him if she wants the money?—Yes, or to send somebody else; but she can take out a summons if he gets in arrear.

1840. Have the missionaries informed you at all, in the course of your inquiries, that in practice the wife often is forced to go to the husband?—I have never heard much about that. Sometimes they say they do not like to go because they are afraid of being ill-treated again, but it is exceptional. We do not grant a summons until they are about four weeks in arrear, and, if necessary, a warrant; and we may grant a warrant in the first instance.

1841. Then the question of cruelty does not govern the nature of the order you make as to the payment of the sum. You do not require the husband to pay the sum to a third person if the reason of the order has been cruelty?—We do not, in the first instance, as a rule.

1842. Then, if the husband disappears, can the wife get any help from the court?—Yes, she can apply for a warrant, which we should certainly grant her.

1843. (*Lord Guthrie.*) Would you shut the court altogether when such indecent details are being stated as you mention, or would you merely prevent the publication in the public papers?—I would shut the court.

1844. Altogether?—Altogether. I would exclude the press and the public generally—except the parties.

1845. At the present moment it is the practice, when such matters are expected to be brought out, that the cases are heard in private?—Yes, sometimes the cases in the Divorce Court are heard *in camera.*

1846. Would you apply it to all divorce cases where the question of adultery comes up?—Yes, I should.

1847. And that would apply to whatever court they were heard at?—Yes.

1848. The county court or any other court?—Yes.

1849. Would you see any objection to there being put into the paper a statement of the nature of the case, and the result of it, with a statement of the judge's opinion?—What I think would be the satisfactory thing would be to have a list of cases, as is always published in the courts in London, with the parties set out in it, and eventually I do not see why the result should not be published without any details, and I think that would deter some people from coming into the Divorce Court.

1850. Would not your view about the evils of the Divorce Act be very much minimised if the details to which you refer were prohibited, and the courts were shut?—It has gone rather too far now, I think. The public are partly demoralised.

1851. But for the future, do you think it would have the effect of minimising it?—Yes, I hope it may, because it is reading these things that very often put it into people's heads.

1852. (*Sir Lewis Dibdin.*) I gather you would keep the jurisdiction as to separation orders quite separate from the divorce jurisdiction, just as it is now?—Yes.

1854. Now, with regard to the divorce jurisdiction. You regard divorce and dissolution of marriage as a very serious matter?—I do.

1855. Which ought only to be confided to an important court?—Yes, I do.

1856. And you do not regard the magistrates' courts as sufficiently important for that purpose?—I do not myself. I do not say that the magistrates or the stipendiary magistrates could not do it, but I——

1857. You choose the county court because you think that an adequately important court?—Well, they always have distinguished judges there.

1858. Now, it has been suggested here by Mr. Justice Bargrave Deane, that, in lieu of the present system, arrangements should be made either for one of the present judges of the Divorce Division, or for an additional judge, to go round to different centres and deal with these cases at different intervals?—Yes.

1859. Of course, there would be all manner of difficulties; but supposing such a system could be arranged, would that have your approval, or not?—No, I would rather leave it to the county court. They could only go at stated periods, and there might be a great deal to do or a very little, and I would rather leave it to the county court.

1860. Do you think cases of that kind should be dealt with by the judge alone, or a judge and jury?—I think it ought to depend on the parties.

1861. They ought to have the opportunity of its being decided by a jury?—Yes.

1862. Do you think the county court juries are quite adequate tribunals for such important matters?—I have no reason to doubt it, but I have no experience.

1863. You know they are less in number than the ordinary jury?—They might be increased to a larger number in these cases if necessary.

(*Judge Tindal Atkinson.*) There are eight now.

(*Sir Lewis Dibdin.*) Well, that is less than 12.

1864. I see you say in your proof you are afraid that an extension of this jurisdiction to county courts would produce a great amount of collusion?—I think it might.

1865. That is, you think, an inevitable difficulty?—I think it would be, myself.

1866. Now, let me ask you with regard to separation orders. Is it not your experience that efforts are made, both by the magistrate and by the police court missionary, to reconcile the parties?—Yes, it is.

1867. And very often with successful results?—Yes, I believe so; and the friends very often try to do it too.

1868. Sometimes before an order is made, and sometimes afterwards?—Yes, before an order is made chiefly, I think.

1869. Then, it has been suggested that the whole of this jurisdiction should be transferred to the county court and become part of the divorce jurisdiction, and that the divorce should be granted at once instead of separation?—Yes.

1870. Do you think that would be a good thing or not?—No, I think not. I would keep the power to grant separation in the summary courts.

1871. Would it not lead very often to divorce being granted when, under ordinary circumstances, reconciliation would follow, as now takes place?—It might. I cannot say what the magistrates would do——

1872. No, I say when reconciliation might take place?—Yes, they would be less likely to get reconciled I think.

1873. Now, I think you said that desertion persisted in should lead to divorce?—I think so—persisted in for a considerable time you know.

1874. Is not that a very large extension of the present divorce law?—It is.

1875. Because it means, does it not, that anybody who wants to be divorced has only to stay away long enough and they can get their wife to divorce them?—Yes, that is so. It is adultery coupled with desertion now, I think.

1876. Now, if, as you tell us, your view is that the Divorce Acts have produced mischief—I suppose that means from a social point of view and the point of view of society generally?—Yes.

1877. Then is it not an aggravation of that mischief that divorce should be obtained for such matters as insanity and desertion?—It is a very hard case for a man or woman to be tied to a person for life who is hopelessly insane and has no chance of coming out again.

1878. Therefore, if divorce is allowed at all, you think it should be allowed for such cases?—Yes. Quite understand, I only say when the doctors certify it to be perfectly incurable.

1879. Now, I want to ask you one more question. What is the relation of your evidence with regard to the extension of divorce for these purposes to the religious teaching of the New Testament. Does it agree with it or not?—I do not profess to give evidence on the clerical view.

1880. I am not on a clerical subject, but we all know ——?—I do not think I could express any opinion as to whether it was in conformity with the scriptural reading. I do not think I can say. I can say this, that I think if people are separated, and then there is a divorce, a good many of the clergymen, I think—I speak with all due respect—would not marry those people though they wanted to be remarried.

1881. I do not wish to ask as to the line the clergy would be likely to take, but I gather you do not suggest that what you propose as to the extension of divorce does agree with the New Testament?—I cannot express an opinion as to that.

1882. (*Judge Tindal Atkinson.*) In your view, I understand that the class of people which you have to deal with are debarred from obtaining a divorce under the present condition of things?—Yes.

1883. Absolutely debarred?—Practically.

1884. However grievous the nature of the case may be?—Yes, on account of their poverty.

1885. Then, Sir Lewis suggested, that the High Court Judges of the Divorce Court should travel through the country ——

(*Sir Lewis Dibdin.*) No, I did not. I said Mr. Justice Deane suggested it.

1886. (*Judge Tindal Atkinson.*) Well, does it occur to you that that is practicable?—No

1887. Because the parties would still have to travel a considerable distance to the judge?—Yes.

1888. And a considerable time would elapse before they could get the judge there?—Yes.

1889. Now, it is suggested to you, that jurors in the county courts are not fit and proper men to try such cases. As far as you know—you have had some experience of circuit work—is there any difference between jurors drawn in the county courts and those in London?—I think they come from the same classes.

Supplement to Mr. Marsham's Evidence.

(Seven years 1903 to 1909, inclusive.)

Court.	Women. — Separation Orders with Alimony.	Men. — Separation Orders for Habitual Drunkenness of Wives.
Bow Street - - -	32	3
Westminster - -	293	35
Marlborough Street -	42	17
Clerkenwell - - -	685	58
Lambeth - - -	656	49
Marylebone - - -	453	41
Thames - - -	399	23
Greenwich - - -	263	40
Woolwich - - -	91	20
West London - -	511	62
South Western - -	542	34
Old Street - - -	444	34
North London - -	463	32

Tower Bridge.—No return, as Mr. Rose will give evidence.

1890. (*Mr. Brierley.*) With regard to these figures you have given, do you include in the separation orders granted to women with alimony the orders for maintenance in cases of desertion, or exclude them?—I think they are included. I have here what the original orders were.

1891. Do not you find a great majority of these applications are for maintenance in cases of desertion?—Very often they are.

1892. Therefore, though you exercise great care in granting separation orders on the ground of cruelty, that hardly applies to the cases of maintenance in cases of desertion?—No.

1893. If the husband has gone you are bound to grant it?—Yes.

1894. I was rather struck by the smallness of the numbers if the applications for desertion are included?—I think they are included.

1895. (*Chairman.*) There is one question I should like to ask which I ought to have done before, and I apologise for forgetting it. Do you find it is necessary, or do you think it is necessary, in the orders where the charge is desertion—separation orders, you know—that you should put anything in the order for separation at all? Is not the order for the payment of money all that is required?—Very often we do not put it in.

1896. You do not in London now?—No.

1897. But you agree it is not necessary in those cases?—No; we strike out everything with regard to that.

1898. That is since a certain judgment calling attention to it?—Yes.

1899. The object in those cases is to get maintenance, and not protection?—Yes.

1900. In cases of cruelty it is a different thing?—Yes.

1901. There you want protection as well as maintenance?—Yes.

Adjourned until to-morrow at 10.30 a.m.

Winchester House, St. James's Square, London, S.W.

FOURTH DAY.

Tuesday, 1st March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. JOHN ROSE called and examined.

1902. (*Chairman.*) You are one of the Metropolitan Police Magistrates?—I am.

1903. Sir Albert de Rutzen has communicated with you, and sends your name in as one of the magistrates who will give evidence here?—Yes.

1904. How long have you been a Metropolitan Police Magistrate?—Upwards of 18 years.

1905. Where is your present sitting?—At the Tower Bridge Police Court, which comprises Southwark, Bermondsey and Rotherhithe.

1906. The other side of the river?—Yes.

1907. The first point you deal with in your proof is the question of local courts. It is shorter if I ask you simply to state the view which you have formed with regard to the desirability of establishing local tribunals to meet the questions which the poorer people are concerned in?—The law, of course, is alike for the rich and the poor. But the present tribunal for divorce is not accessible by the poor. I think it is right that they should also have an accessible court as well as the rich, and I think it is desirable local courts should be established for the trial of divorce cases.

1908. Have you formed any opinion, from your experience, as to what courts would be most suited for that purpose?—I think the most distributed courts, and the courts in many respects most suitable, would be the county courts.

1909. I do not think I need go through the details of that position. We have had that very often. The next point I would like to ask you shortly to state, is your view as to the operation and effect of the Summary Jurisdiction Married Women's Act, 1895, numerous cases of which I presume have been brought before you?—Might I be permitted to briefly describe the district in which I sit, because the districts vary in the metropolitan area. I might perhaps be allowed to say that, inasmuch as there is some variety of district, there may be a certain variety of opinion amongst my brother magistrates, and I should wish only to express my own opinion formed on my experience in my own district. The district in which my court is is a large one, containing 300,000 people, perhaps. It consists chiefly of the working classes. They are employed in the docks, warehouses and factories, and they are very poor, many of them. There is a good deal of unemployment, a great deal of casual employment, and a great deal of employment of women, which all bears on the question of separation orders. That is the description of the district. People are engaged in warehouses and in factories and at the docks, and there are a number of people engaged in transport, the transporting of merchandise from the docks to the warehouses. That is done by carmen, who are in a sense unskilled workmen. The carman is produced from the van-boy; he proceeds from school to the tail of the van, ultimately is allowed to hold the reins, and then to drive, knows not much about horses, but learns to drive. I think I may reckon him as practically unskilled.

1910. I think we gather pretty well the nature of the district from what you have said. We want to know what your view is as to the operation and effect of that Act which I have mentioned, according to your

experience?—I think that the Act on the whole has worked perhaps beneficially in relieving a great number of persons from the obligation of living together, who for various reasons have been unable to do so with anything like comfort or propriety owing to drink and violence, incompatibility of temper, idleness, and the ordinary faults of human life.

1911. What effect do you think the actual orders have had upon morality?—It is impossible to do more than speculate on that subject, but I should be afraid that separation orders, with their good side to which I have adverted, have had their bad side. My experience is, and I could give you instances if necessary to show, that when parties in the class of life with which I am dealing, are separated, immorality almost invariably follows on the part of the man, and not infrequently on the part of the woman.

1912. Would you amplify that a little and tell us in your own way by an instance, if you like, how it operates?—It operates thus: the man is separated from the woman: he has nobody to keep house for him: he has perhaps to pay her 7*s.* a week. He finds himself practically a bachelor, and he turns to some other woman.

1913. Do you find that common in your experience?—I find it common.

1914. Take the other side, the effect on the woman?—The effect on the woman is perhaps this: the woman has children, and frequently many children, and I find that she very often works for them, because in my district both the men and the women go to work, which has this bad result, that the man being in casual employment very soon finds it convenient to leave the woman to do the work at the jam factory. To give an example. She toils at the jam factory: by-and-bye her children begin to bring in a little money, and she with her children, aided by whatever she may get from her husband, is able to lead, and generally does lead, a fairly respectable life, perhaps for the sake of her children. If she is young, and very often she is quite young, then more disastrous results follow, because she turns to some other man, in my experience. They marry, I might say, in my district very young. The young carman of 20*s.* a week thinks if he marries a worker at the jam factory with 7*s.* 6*d.* a week, the two incomes together will do, and then the consequence is that he gradually, if he falls out of work, leaves her to maintain him. There is too much of that in my district.

1915. Would your view be, as a result of your experience, that in cases where separation is obtainable it would be desirable that the power of obtaining a divorce should be conferred?—Speaking of the class of which I know most, in fact the only class I do know much of, I say, and I say it reluctantly, I think divorce would be desirable.

1916. Would you tell us whether you find, according to your experience, that orders on a man for payment are complied with, or whether it leads them to clear out altogether?—In my district, having regard to the nature of the employment, the orders are very frequently not complied with.

1917. What results follow?—These results, that the man is brought up for arrears of maintenance; they have generally accumulated to several pounds, and he is quite unable to pay them. I am obliged to send him to gaol for non-payment; that is the only way of enforcing it. I can think of no other way but by sending the man to goal for non-payment of the arrears, and men are often sent over and over again. I have a case in point where a man who has gone away to work in a mine in Wales, where he earns good wages, will never pay his maintenance money to his wife in London unless a warrant is issued for him in Wales. He is able to pay and does pay, but only under the pressure of a warrant and a commitment order. On the other hand, there are a great number of men who pay pretty regularly, and a great many who really cannot pay.

1918. What remedy, if any, do you suggest should be applied to that state of things?—I am unable to think of any remedy but the cruel one of just imprisonment. Of course where a man means to pay he will generally pay driblets instead of 6*s.*, 7*s.*, or 8*s.*; he will pay what he can, and his wife, poor woman, will generally accept what he can give her, and not insist on the full amount of the alimony she has been allowed by the order.

1919. One point occurs to me upon this: you seem to think that the county courts should be available for divorce cases?—Yes.

1920. Does that apply also to the county courts in and around London?—I think, as a matter of consistency, although London is quite exceptional, it should also apply to London, but I venture to make the suggestion for what it is worth—it will be considered by those better able to consider it—it might be desirable to have a London county court for divorce, one county court in London taking all the divorce cases. You would have a uniformity of practice, and certainly enough work for one county court judge in London.

1921. Do you think, if that were done, there would be any detrimental results? I am now referring to the part of your proof on the second page as to collusion, and so on?—I am afraid there is collusion, unless it is strictly watched, in the case of separation orders, and I feel sure there would be collusion in divorce, but then that is for the judge to watch and detect.

1922. Would you explain that a little more fully. We have not heard of that before, with regard to collusion in separation orders. Will you explain how that works?—A woman is jealous: perhaps she has some cause for jealousy. She upbraids the man just on mere rumour: he flings away from her and says, "Very "well, if you think that, I will leave you," and he leaves her. Then she comes for a separation order on the ground of desertion, and then he appears to defend the case for desertion, but says she may have an order if she likes, and an order would follow unless the magistrate was very stern in insisting on proof of the requirements of the Act of Parliament, insisting that she should show persistent cruelty and wilful determination to desert, or failure to maintain, and I have frequently had this kind of case, solicitors appearing for each party, and one getting up and saying on the part of the defendant, "Well, your Worship, I am scarcely prepared to "contest this case, and I have agreed with my friend "that there shall be a separation order." I say, "Certainly not." Rightly or wrongly I have never permitted that. I have insisted on the strict proof there and then of the woman's case. But then one knows that she is not to be exposed to due cross-examination, that the case has to be merely formally defended, and I consider the separation obtained, if obtained, more or less by collusion.

1923. I follow that the husband would rather pay than live with her, and so he does not fight?—That is just what I mean.

1924. Would it be your view that if a proper case existed, proper grounds existed, it would be desirable to have divorce in those cases instead of separation orders?—I think so.

1925. Do you think that would be in the interest of morality or not?—Yes, I think it would. You must excuse my hesitation: the subject is so difficult.

1926. Quite. I think you are giving your evidence very carefully. How many separation and maintenance orders have you made in the last five years in your division? I understand it is the last page of your proof?—Yes.

1927. May we take that table as correct?—That table is correct.

1928. Those are the orders made. I take it there are more applications?—Many more applications.

1929. Under what circumstances are orders applied for when they are not granted?—The woman, speaking of my own practice, applies in the morning for a summons. I ask her upon what ground, and I satisfy myself that there is some reasonable ground for issuing a summons, which involves getting an ex parte statement from her as to her case. If she says, "He struck me "once: I want a separation on the ground of persistent "cruelty," I say, "That is not persistent; you had "better go home, and if he knocks you about frequently "or more, come here again," and then I dismiss her. If he has deserted her I say, "When did he leave you?" and she says, "He left me on Saturday." Then I ask,

"Has he gone to look for work?" "I do not know," she says, "he has left me." I tell her "You had better "wait; he will come back again to you perhaps." She says, "How can I wait, because I have no wages and he "has not brought me his wages, and I shall have to "go to the workhouse," and so a very short period of leaving is allowed by us to amount to desertion on account of the woman's indigent position.

1930. I believe it is the case that no limit of time is prescribed in the Act before the lapse of which an order must be applied for?—None, and they come very soon after the leaving, and it is a difficult matter for the magistrate to find out whether there is real desertion or mere absence through some quarrel, or to get work or otherwise.

1931. Would you put a time limit on that in any way?—With regard to weekly workers it would be very difficult to do so. A woman can sometimes drag along with the aid of friends, but often is driven to the workhouse in a week or a fortnight.

1932. Would it be desirable, instead of making a separation order on those occasions, that the order should simply order maintenance?—Yes. I have obeyed, as far as I could, your Lordship's decision in Dodd *v.* Dodd, and made orders for maintenance without separation, but there are difficulties in the way, because the man on whom the order for maintenance was made, say to pay 7*s.* a week, promptly goes back to his wife on whom perhaps he is living.

1933. It would be desirable?—That would be desirable if she wanted him back, but unfortunately she does not want him back, because he is worthless: he is a casual labourer and drinks his earnings, and really the woman does not want him back and is rather jumping at an occasion for getting rid of him, in my district.

1934. Do you think it right she should be allowed to get rid of him because for a week or two he goes away in search of work?—No. She would never get an order from me if he had gone in search of work. What happens in my district is that he earns enough at the docks to keep himself in drink, and he lives at Rowton House, a benevolently intended establishment that has its dark side like all benevolent organisations, and he lives there comfortably.

1935. Would your view be that it might be desirable to put a time limit on the separation order in the first instance?—Yes.

1936. Take the case of desertion. It has been suggested, it was suggested in the report we made on the county courts, that the magistrate should have a limit of power to order six months separation. Leave out the exact time, would it be your view that at any rate in desertion cases it may be desirable in the first instance to limit a separation order entirely?—Certainly I think it would. In my experience after the making of the separation orders, the parties, for various reasons, often come together again. Perhaps they are still fond of each other; at all events they are accustomed to such comforts as they have in their home life, and the man misses them and the woman misses him, and I am happy to say they often come together and we often persuade them to come together.

1937. Do you think it would tend to help that movement if the time for separation were fixed for a shorter period, to begin with?—I do, indeed!

1938. That would not necessarily apply to cases of gross cruelty where protection is required. How would it operate there?—The cases of gross cruelty are not numerous.

1939. You think the same principle might be applied to cruelty cases as well?—In a case of gross cruelty, I think it would be useless. The man who is grossly cruel will not change his nature, but I do not think there is much gross cruelty. There is a great deal of rough usage without being exactly gross cruelty.

1940. Do you suggest the magistrate should have a discretion as to whether he made a permanent order, or an order to operate in the first instance for a limited period?—Speaking for myself, I should be glad of such a discretion.

1941. At present you can only make a permanent order?—Yes.

1942. In your memorandum, you have made some notes on the various grounds on which an order can be made. Looking them through, I do not know whether there is any evidence of fact upon thoes you wish to draw attention to. They are rather lengthy, and merely seem to be descriptive of the class. Is there any fact you think worth while mentioning in connection with those? I should be glad to receive it?—After being requested to give evidence before the Commission I made such hasty notes as one can make in the pressure of business in the court, of the cases that came before me, and I should be very happy to submit it to the Commission, if anyone cared to see the actual facts of the sort of case that comes before the police magistrate in a rough district.

1943. Have you them here?—Yes, but the cases become rather numerous.

1944. We will have it put in. Take one as a sample?—Certainly.

1945. These are really only sample cases that come before you?—They are just the cases that happen to have come within the last month or two.

1946. There are descriptions of each case?—Yes. These are the notes I have made.—November 19th, 1909. *Desertion.*—A. B., married 5 years, 3 children. Husband, carman. Wife had been boxmaker. Her father had chiefly kept them. Husband had beaten her and had just returned from prison for deserting her. He had also been imprisoned for indecency with another woman in the street. He had told his wife to get a separation. She and her children were now in the workhouse. He was working as a waterside labourer 4 days a week. Order, 7*s.* 6*d.* weekly. *Desertion.*—C. D., married 20 years, children grown up. Husband and wife had been previously separated, he having been frequently imprisoned for assaulting her. The children were helping to support her. She charged her husband with desertion. He declared that she told him to go. He kept a paper stall. Order, 7*s.* weekly. *Desertion.*—E. F., married 9 years, 2 children. Husband a coal porter, had left his wife 2 months ago. He admitted it, but said that he married his wife in the Transvaal, where he was a sergeant-major in the army. She drank, was immoral, neglected children and had caused the loss of his post. He had a housekeeper and wanted custody of the children. His sister-in-law and his housekeeper also gave evidence of the neglect of the children by the wife. Her elder child, not by the defendant, was well cared for. Order, 9*s.* alimony, he to have custody of the two younger children. November 25th, 1909. *Desertion.*—G. H., married 10 years, 5 children. Six months ago the family were turned out for rent owing. He went to his parents, wife to hers. He was a waterside labourer in only casual work. She said that she could work and maintain herself and children if he would allow her something. Maintenance order, 5*s.* weekly. *Desertion.*—J. K., complainant's wife did not appear, but wrote that she was in Newington Workhouse. He explained that they had been turned out of their house because she, being a drunkard, had not paid the rent, that he got an order for the workhouse for himself, her, and family. She refused to go, but went into another workhouse. He had now got work and alleged that she had deserted him. I dismissed the summons. A previous summons by her had been dismissed by my colleague. *Desertion.*—L. M., married 25 years. Wife said that 18 months ago he struck her and told her that if she did not get out of it he would b——y well put her out of it. He gave her a black eye, and had previously given her blows and threatened her, that she left for a fortnight, and went back to him. In January last she went away because he kept on saying that if she did not b——y well get out of it he would "do her in," and she went in fear of her life. Since then she had lived apart, and he sent her three sums of 5*s.* His earnings were over 2*l.* weekly. Cross-examined she admitted that a married man visited her twice a week, but was an old friend and often kissed her. Her husband was jealous of him. I persuaded the husband and wife to resume cohabitation, and adjourned the case 14 days for them to do so. December 4th. *Arrears.*—N. O., 26, arrears of maintenance under an order of 7*s.* 6*d.* weekly. The wife, a

decent woman with a young child, had received no payment from her husband since June. He had been imprisoned for one month this year for arrears; 6*l.* was now owing. He was an ex-soldier with a pension which he had lately drawn without sending any money to his wife. When apprehended he was working on a farm in Sussex, and he also sold fish in the village; 6*l.*, and 1*l.* 2*s.* 6*d.* costs or 6 weeks imprisonment. December 10th. *Desertion.*—P. Q., married 6 years. Wife aged 71. Differences in 1906. Summons for a separation order, but the couple privately agreed to separate. He became ill and asked her to come back to him. She did so. She fell ill and went away to a house, where she took in lodgers. She called on him to receive her back. I persuaded him to do so. *Failure to maintain.*—R. S., married 1st January 1892. Wife summoned husband for failure to maintain her. She had left him by merely moving into another room in their house. She complained that he did not give her enough money. He said that he was in irregular work. She said that he threatened her, but she was a very excitable lachrymose woman, and I bound him over to keep the peace, not being satisfied of any "failure to maintain." December 10th. *Prosecution for neglect to maintain.*—Defendant was 66. His wife was in the workhouse. She had a separation order made 14 years ago for cruelty, and 10*s.* weekly alimony. She had received no money from him for years. He was now a saw-sharpener, but had been a carpenter, and said he lost his work through having been imprisoned for three months in default of paying 14*0l.* arrears. He had also been twice in prison for assaulting her before the order was made. When apprehended he was living with a woman. The wife had children by a former husband. One calendar month hard labour. 23rd December. *Arrears.*—T.U. Husband was summoned for upwards of 12*l.* maintenance arrears. He was a barman living with another woman and had children by her. He had left his employment and disappeared. She had postponed proceedings on his promise to return to her. He did not appear to the summons, so warrant. *Arrears.*—V.W. Wife had two children by a former husband and three by the defendant. She had had a previous separation order with 8*s.* weekly, but had taken him back out of pity for his state. He had never paid the money under the order, but had always been sent to gaol for the arrears. He was a carman, and, said his wife, a dishonest one. She worked in a jam factory, and asked nothing for herself but only maintenance for the defendant's children. 29th December 1909. *Separation; attempted Suicide.*—Wife with three children separated from her husband, who had allowed her 14*s.* weekly; but he was now living with another woman of some means, and had stopped the allowance and threatened to go abroad. She went into a bedroom, turned on the gas, and was found unconscious from its fumes, her children being in the next room. She was now charged with attempting suicide. *Application for advice.*—Wife three years away from husband; had been working and maintaining herself. She was now out of health and applied for a summons for a separation and maintenance order on the ground of desertion. The circumstances of their parting were, that he had threatened her and turned her out of doors; but she went in again and then left voluntarily. I advised her to demand of him to be received and maintained, and if he refused she might have a summons for desertion. *Persistent cruelty.*—Wife asked for a separation on the ground of persistent cruelty. Her husband had smacked her face and she left him. He had only struck her twice in the last three months. 30th December. *Arrears.*—X.Y. Maintenance arrears. He was a stoker, aged 25, and was liable under a separation order to pay 7*s.* weekly to his wife, but had paid nothing since the order although he had employment, and, as she said, plenty of money. 11*l.* 1*s.* arrears or six weeks imprisonment. 30th December 1909. *Maintenance arrears.*—The husband was a telegraph labourer liable to pay 8*s.* weekly for the maintenance of his wife and three children under a separation order. He had already been imprisoned for 21 days in default of payment, but was now 11*l.* 4*s.* in arrear. His wife, a wretched looking girl with an emaciated baby, seemed almost starved. 11*l.* 4*s.* or six weeks. 31st December. *Arrears.*—Husband and wife both old. Separation order made in September 1909 for 7*s.* weekly. She drank; he had ill-used her in consequence, and therefore the order had been made. 1*l.* 10*s.* 6*d.* was now due. I adjourned the case 14 days that he might pay the amount. 17th December. *Desertion.*—A.B., married 27 years. A carman at 25*s.* a week. He left his wife three months ago and had not returned. He paid her 6*s.* weekly for seven weeks. Three children out of eight were at home, aged respectively 17, 10, 8, One, a girl, earned 8*s.* weekly and gave her mother 7*s.* Her rent was 5*s.* 6*d.* The husband in his defence said, that when he came home he found no fire, and his wife out till 1 a.m. She told him to go away and stop away. The daughter said her father was always drunk, but admitted that her mother went off hopping against his will. I adjourned the case seven days to give him an opportunity of going back to his wife. *Arrears.*—C.D., was prosecuted by the parish for neglect to maintain his child, and was also summoned for arrears of maintenance due to his wife. She obtained a separation order on the 30th July 1907 on the ground of desertion, with an allowance of 10*s.* a week and the custody of three children. Since the 5th May last she had not had any money. She became on the 17th September chargeable to the parish with two children, a sister taking the third. On the 4th October she came out of the workhouse, and on the 6th November took out the children and was having parish relief. The husband, a farrier and racing man, was now living with a barmaid and two children. I ordered him to pay the arrears 15*l.* 10*s.* or two months imprisonment. 10th February. *Adultery after separation order.*—Application to reduce order. Inebriate. Husband in October 1908 got a separation order against his wife as an habitual drunkard, he to pay 10*s.* weekly. He was then earning 30*s.* a week as a picture frame maker. He had the custody of five children. In April 1909 the Magistrate reduced the amount of allowance to 7*s.* because the wife was earning wages in service. Afterwards she wrote to say that while earning she would not require him to pay. Nevertheless she obtained from Magistrates in the country where she was living a warrant for arrears. He was arrested, produced the letter to the Magistrates, and on payment by his brother of 5*l.* the Magistrates arranged the claim, which was much more, and discharged him. He now applied for a further reduction of the alimony. He also asked for a rescission of the order on the ground that his wife had committed adultery, and he produced some love-letters written to another man, and one from him. 19th February. She called the man, who swore that he had not committed adultery with her. The letters were inconclusive. I did not rescind the order, but reduced it to 6*s.* with her consent. 12th February. *Desertion.*—C.D., married 10 years. Four children. Husband a fishmonger. He left his wife in December, having being sent to prison for 14 days for being drunk and disorderly. She became chargeable to the parish, and on the 7th January he not having returned to her he was sentenced to one month for desertion. She went to her mother's first and then to the union. He said that she need not have done so. She had previously had a separation order on the ground that he was an habitual drunkard, but had taken him back. I adjourned the case to give him an opportunity of making a home for her. 24th February. *Desertion.*—Application by wife whose husband has left her in 1908. He had failed in business as a china salesman. Addicted to drink. Wife kept by her own work and a son. He was living with and kept by a dressmaker with five children. Yesterday he came and took away his wife's sewing machine, claiming it as he had paid for it. Hence the application. Summons for desertion. 26th February. *Persistent cruelty.*—Application by wife for separation on ground of persistent cruelty. She said he had pulled her about by her hair. I inquired as to other acts. She said once he had cut her head with a boot. Seven weeks ago he threw a cup of hot tea over her, but it fell on her dress. She had one young child. No witnesses.

Summons granted. *Desertion.*—Application by wife for separation on ground of desertion. Married in August, 1908. Two children, one of them born before marriage. She had previously summoned her husband for desertion. He produced her letters to another man. The Magistrate dismissed the summons on the ground of her adultery. Now she said that since the dismissal he had had connection with her, but refused to maintain her, saying he was no longer bound to do so. I granted a summons that the case might be investigated and the point argued. 28th February, 1910. *Persistent cruelty.*—Wife asked advice. Husband a carman, 29. His knee cap having been broken in an accident he received 250*l.* compensation last October. Since then he had been spending his money on gay women, had contracted disease from them. On Saturday night an altercation arose between husband and wife because he wished her to draw out 9*l.* of 50*l.* which stood in her name. He punched her in the face. Had abused and ill-used her without actually striking her for some time. He allowed her 2*s.* a day. Three young children. Summons. *Failure to Maintain.*—Wife complained of failure to maintain. Husband employed at Stores, 28*s.* a week. Had given her no money for 5 weeks, but brought home some provisions. He used to allow her 17*s.* a week, but the rent was 9*s.* 6*d.* One child. She left him on Wednesday week. *Husband asked advice.*—He was a bricklayer's labourer, work intermittent. A total abstainer. He said his wife left him frequently for a fortnight or three weeks at a time. She said she went to work, but she brought no money back. She abused him in the following terms (obscene) very frequently. Encouraged her daughter to do so. Her words (obscene). The provocation was unbearable, What redress? *Desertion.*—Wife complained of desertion. Her husband, a clerk, left her 5 weeks ago, but his wife agreed that he should leave her and he to pay her 10*s.* a week. He paid for some weeks and then ceased payment. *Failure to maintain.*—Wife complained of failure to maintain. Her husband, a stevedore, out of work. She said he did not get up to look for it. She worked as a collar hand earning from 18*s.* to 1*l.* a week. She had a child now in Fever Hospital. She left him on Saturday, he having threatened to kill her if she left him. She was afraid of his threats.

1947. Have you any general inference to draw which you would like to present to the Commission. We are trying to get some general principles and points?—Yes.

1948. You have gone through these various causes which the Act allows you to act upon. What I want to get is whether you have drawn any inference which would lead us to suggest any amendments or alterations in any of those matters?—I am obliged to your Lordship; I did not quite apprehend the question, I am afraid. I think there might be amendment. I find great difficulty arising from the words of the section which say that it must be persistent cruelty or failure to maintain, causing the wife to leave and live separate and apart from her husband. Great difficulties arise from that. It is a condition precedent that she should have left her husband because of his persistent cruelty or failure to maintain. I say to the wife, "Have you left him?" She says, "I have not left him." I say, "But you must leave him for his cruelty or failure to maintain." She says, "How can I leave him? I have my children; where am I to go?" Occasionally she can go to her parents; often she has no parents to go to, and I think that part of the Act might be altered. The words "have caused her to leave and live separately apart from her husband" might be struck out.

1949. That she might still be in the old home, and he not technically having deserted, but she still wants assistance?—No, I am only on failure to maintain, and persistent cruelty, not on desertion.

1950. Where desertion could not be made out?—Yes.

1951. But where she still is in the house, and yet still requires maintenance or protection of some kind; but the words are that she must leave before she can get it. That is what I understand?—Yes.

1952. We have the Act here. What would be your suggestion as to the amendment there?—I think that it should not be necessary that she should leave and live separately and apart from him. Sometimes she is the tenant of the house; she is paying the rent; the landlord is looking to her for the rent, or she has to leave her children behind.

1953. On the word "persistent" have you any observation to make?—The word "persistent" is a very difficult word to deal with. The woman comes before me, and says, "He is always knocking me about, continually knocking me about." I say, "Come to dates; when did he last knock you about?" She says, "On Saturday." I ask, "When before that?" and she says, "I do not know; he is always doing it; I cannot remember." I ask, "When was the last time before that he knocked you about?" She says, "About five weeks ago." Then I say, "And before that?" And she says, "Well, that was August Bank Holiday." I say, "What did he do then?" And she says, "He pushed me," or "gave me a black eye," and perhaps there would be two serious assaults, and three or four very trifling ones; she says that is persistent cruelty, and I have to consider whether that is persistent cruelty within the meaning of the Act. The word "persistent" is a troublesome word. I really cannot say what is "persistent cruelty" in that connection in this Act of Parliament.

1954. Do you find that drink is a very conducing cause to all these troubles?—I do, indeed. I should like to add in my 18 years' experience I think the drinking habits are improving. There is not so much drink.

1955. Have you in what you have said covered the points you make in your proof about desertion and wilful neglect? Have you covered all you wish to say about that?—I have, thank you.

1956. The next point to which your proof is directed is the question of reports of cases between husband and wife with regard to morality, and so on. Will you tell us what your experience has led you to conclude about that?—I am afraid I must speculate as to the effect of reports, but I do not think the working classes read the newspapers much, or indeed at all. I do not think their short and simple annals are much reported, not like the famous cases in the divorce court. Therefore, perhaps, the publication of the reports at all events is on a somewhat different footing; but if their cases were reported I feel sure that only those that were spicy would be read, and if the spicy ones would be read they would be demoralising to the community.

1957. You would be against details of these cases being provided as reading for the public?—I should be against details. I would not prevent the publication of the reports; but might I be permitted to suggest that a clause that I have attempted to draft might perhaps meet such a case?

1958. If you please?—That the publisher of any newspaper containing matters in a divorce court, which, in the opinion of the judge, are unfit for publication, should be liable to a fine not exceeding 100*l.* The newspapers with excellent judgment already exclude a quantity of cases that are unfit for publication. I have, I am sorry to say, many cases in the year that are quite unfit for publication, and they are not published. I think that might be extended, and that editors would soon be brought to think that other things were unfit for publication besides those they already adjudge to be unfit for publication.

1959. Apart from the question of anything actually indecent in a report, would you consider that some reporting in a decent form of matrimonial disputes is advisable or not?—If published in a decent form. Perhaps what was said by the President may be right, that fear of publicity has some good influence. It may, but I do not think the poorer classes read the papers much, so that it would not apply so strongly to them.

1960. The last question is on the question of any amendments to the divorce law. You do not feel that you wish to express any views on that?—No, I am not competent to express any view on that.

1961. You keep yourself to separation orders?—Yes, and to the class with which I have to deal.

1962. Is there anything further I have not asked you about, upon which you wish to give evidence?—Nothing.

1963. (*Mr. Rufus Isaacs.*) I want you to tell me a little about this. In the administration of these separation orders in your court, an order would be made for payment of money for maintenance, I suppose, by the husband?—Yes.

1964. In making that order you take into account presumably the amount he is earning, and, I suppose, also the number of children?—Yes.

1965. If there are children, particularly if a large number of children, you would make a larger order, would you not?—Yes.

1966. Is there not a very real difficulty in enforcing these orders?—There is great difficulty.

1967. What occurs to one about it from what one has read is that you get an order against a man who has substantially no goods upon which you can levy, and if he removes from one district to another there is no means of making him pay the amount which you have ordered he should pay for the maintenance of his wife and children?—We have power to have him apprehended on a warrant, and you would be surprised how the officers succeed in arresting him if he has left the district or county. He is brought up on a warrant and committed to gaol in default.

1968. That does not get the money?—No, it wipes out those arrears.

1969. The effect of that seems to be, although there is a money order made against him, he is apprehended for disobedience to the order, and is punished for that, but then that wipes out, as I understand, the amount which has been running against him?—Yes, it does.

1970. Does it make an end of the order altogether?—No. Very often that one punishment has the effect of bringing him to reason, and he pays in future.

1971. (*Chairman.*) I did not quite follow that. Does the imprisonment free him from the past arrears?—From the arrears which are claimed up to the date of his imprisonment; they run on whilst he is in gaol.

1972. (*Mr. Rufus Isaacs.*) It is as the Chairman put it, it frees him from the past arrears?—Yes.

1973. Would you follow it for a moment. Supposing you have a woman, and her husband is earning 25*s.* a week, what kind of order would you make upon him?—I make small orders, because it is impossible for him to pay a large sum. My orders seldom run to 10*s.* In a case of 25*s.* a week with regular employment, and, we will say, three or four children, it may be 10*s.* a week, but that leaves him not very much when he has to pay another rent and his food, and so on. What I find is that they will attempt to pay a small order, and they make no attempt to pay what you would call a sufficient order, and the woman ekes out the difference with her own labour and the labour of her children.

1974. Is it the result of your experience that these orders, generally speaking, are not obeyed?—No, I think on the whole they are obeyed. There are a good many cases where they are not, but if the man is in regular employment, and is satisfied with the separation order, as it were—very often there are faults on both sides—he will pay!

1975. If you take a case of that kind, of a man with his wife, having two or three children left with her, and you make an order of 10*s.* a week, that leaves 15*s.* a week. Does not it often happen he takes another woman to live with him?—Yes.

1976. And they continue to live, without, of course, any marriage tie?—Yes.

1977. And illegitimate children are born?—Yes.

1978. In that case the 15*s.* a week would hardly be enough to keep him, would it?—Sometimes he allies himself to a working woman—sometimes she is even a woman of means. I had a case I think only yesterday morning where the woman had means.

1979. That must be comparatively infrequent?—Yes.

1980. Do you also find cases of the woman in whose favour an order has been made living with a man?—I do.

1981. So that, if that is right, the tendency seems to be by means of these separation orders that you get both the woman and the man living what I may describe as an immoral life?—Often.

1982. Meaning by that general term living with somebody to whom not married. It seems rather as if the effect of these orders must be to produce that state of things?—I am afraid in a number of instances it does so.

1983. In the case of a young man or woman, if there is a separation order made in favour of the woman against the man, in the ordinary course of things, apparently, speaking from your experience, both of them would continue their lives, the woman living with a man, and the man living with a woman?—I am afraid so.

1984. And in the ordinary course both of them having children?—Yes.

1985. That seems to lead to this state of things, that you have by means of these orders a large number of people living in adultery and a large number of illegitimate children born?—More than if such orders were not made?

1986. Than if there had not been such orders under this Act?—I do not think that; they would go away without the orders. They might separate themselves without the order, and there would be just the same immorality.

1987. You think it has made no difference? Do you suggest that the separation orders which you have power to grant under this Act have made no difference in the respect on which I was questioning you just now?—I really cannot tell. I should think on the whole that they had had a beneficial effect.

1988. A beneficial effect in what relation? It seems to me difficult to understand how they can have had a beneficial effect so far as would affect the living in adultery. I do not quite understand why you suggest they should have had a beneficial effect, because it seems to me that the separation order which is granted results, as you have told us, in both the parties living in adultery; it only seems to produce a state of things which is not desirable. Is that not so?—Suppose no separation order were made: then you ask what the state of things would be. I have a difficulty in ascertaining from my experience what the state of things would be where no separation order was made, where both parties were adulterous, because the case would not come before me.

1989. No, but you have a number of cases which come before you in which there is no question of adultery?—Do you mean persistent cruelty and failure to maintain, and so on?

1990. Yes, cases in which if you make a separation order, an order for maintenance by the husband of the wife and children, the result is then each of them lives apart and then the general run is, speaking generally of course, that each of them then after this lives in adultery?—I am afraid so.

1991. That is what I understood you to say. I am suggesting to you that the effect of granting these separation orders must be to produce a greater number of persons who then live in adultery?—Perhaps so.

1992. I only want to get at the fact. I quite understand your saying, and I quite appreciate your observation, that some of them would?—I appreciate the difficulty you have put me into.

1993. It is not a difficulty I am putting you into: am trying to ascertain the facts. I want to get the benefit of your experience. I am not suggesting it is a difficulty for you. A number of these persons no doubt would be living in adultery whether you had the power to grant separation orders or not?—Yes.

1994. A number of them would?—Yes.

1995. They could not live together, or for some reason or other chose to part. That would be the natural result; but where you have the power to grant the order and the wife receives a certain amount of money from the husband per week, then comes this difficulty which I have been putting to you, that she lives with somebody or he lives with somebody, and that that follows in the majority of cases, or in a great number of cases from the order that is made?—I do not think in the majority, but it does follow.

1996. In a great number?—In a number.

1997. Then if a workman removes from the district; supposing the woman obtained an order to pay 10s. a week against him and he moves from the south to the north, she has no means of finding out where he has gone, in the ordinary course?—She very often can ascertain. How she does it I do not know, but she often ascertains from fellow-workmen, and so on, or by knowing the particular trade, or calling, she manages to ascertain where he is in some strange way, and I grant a summons. Sometimes she cannot ascertain, and then I grant a warrant, and the police by making enquiries find out, again in a strange way, where he is.

1998. As the result of your experience do you think that generally speaking the money is paid by the husband? I want to know from you. I thought experience showed the contrary, that generally speaking he does not keep up his payments?—It depends very much upon the man. If he is a casual labourer at the docks he does not, if he is in regular employment, as a mechanic, he does.

1999. There is much more difficulty in leaving good employment to seek another job, with all its possibilities, chances and accidents?—Quite so.

2000. If you have a man in good employment in that way as a mechanic, the ordinary course would be he keeps on at his employment, or if he leaves that employment he is a skilled workman and they can generally find out where he has gone?—Yes. I do not know how they find it, but they do.

2001. Of course if he is of the casual labourer description the chance of his remaining in employment is more remote; and the means of ascertaining where he has gone are much more difficult?—Yes, because he changes his name and disappears in the wilderness of a lodging house, but even then curiously enough they manage to find him. He haunts his district, his public-house: he revolves round his public-house and is found.

2002. With regard to this table which you have given at the end of your proof, can you give us any idea of the proportion of orders made by you to the number of applications made?—I am afraid I cannot; we keep no note of the applications. It would be mere guesswork, but I should say perhaps I make one order in three having regard to the applications. A great many of the applications on the investigation I make when made to me, turn out quite hopeless. There is no sufficient persistent cruelty on the woman's statement, or no sufficient neglect to maintain, on her own statement. and I say "No summons."

2003. These orders are sometimes applied for on very slight grounds?—Yes, on very slight ground. I cross-examine applicants as effectively as I can when they come for a summons in order not to start them on litigation which must fail.

2004. Very often a fit of temper?—Very often, and very often in the first year of marriage, and I affect to be shocked at the idea of young people being separated, and I comfort them and soothe them and talk about the child which is coming, and they go away and they get over it.

2005. You do find that an attempt by you at smoothing over the difficulties is sometimes successful?—Yes. I hope, of course one cannot tell, and think it is successful. I say how unreasonable her suspicions are, and that he ought to be sorry he has used that word to her, and he says in his rough way he is sorry, and the thing is smoothed over and they go away.

2006. I suppose this kind of thing happens more often with the very early marriages?—Much more often. In my district they marry very young. A carman of 19 will marry a worker in a jam factory of 18. That frequently happens, and, of course, she is not taken to the music hall as often as she used to go, and reproaches him, and he stays out a little too late and is reproached, and there is a quarrel; and that has to be smoothed over. They have a certain traditional belief in the police magistrate and they listen well to what he says. I think we are able to do a great deal of peace-making in that way—at all events, we try.

2007. Can you give us any idea of the population over which you have jurisdiction? It is rather difficult to arrive at anything satisfactory?—I have three districts, Southwark, Bermondsey, and Rotherhithe. I am sorry to say I have only the population of Bermondsey, which is 130,760. I should think the population of the other would be something about the same, so that I should say 300,000 is about the population of the district. The number of orders made having regard to the 300,000 people is not very great.

2008. That is really what I wanted to arrive at. Is there any means that you know of of ascertaining how many of that population would be of the working class?—No.

2009. Southwark, Bermondsey, and Rotherhithe, mostly, I should think?—Mostly of the working class. Might I take the opportunity of saying something I should like to have said when the Chairman was examining me on that point. With regard to the suggested jurisdiction of the county court in these cases, there is a class above the labouring, the hand-working class, who are a little richer than they, and yet too poor to go to the Divorce Court, and who would shrink from going to a police court. They say, "I "was never in such a place in my life," as if the police court was Gehenna, but they would go to the civil court, the county court, with their matrimonial disputes; they would not think of going to a police court—which is an argument rather in favour of giving jurisdiction to the civil court, with respect to that class, the class of clerks, &c.

2010. Police courts are associated in their minds with something unpleasant?—Yes.

2011. It is in a good many people's minds. May I ask one question about the reports, and your suggestion with reference to the reports. I do not quite understand what you mean by the suggested clause. Is that to be imposed in the ordinary way by process under the Summary Jurisdiction Acts, or do you mean the court which is seized of the matter to impose the fine?—I mean the court that was seized of the matter, which would be the High Court, the Divorce Court, or the county court, if the case came before it.

2012. That is to say, if I follow correctly your view, you think it would be well if the judge who was trying the case, or who would try the case, who was presiding over the court, should have the power to inflict by summary means a fine upon the responsible person, the person who is responsible for the conduct of the newspaper, if he offends against decency in reporting the details of a suit?—I think such a clause would have an immediate effect in this way, that publishers would be able to say: "That report must not be published, "and it cannot be published by my rival newspapers, "because they will get into trouble," and they will abstain; as they abstain at present, from publishing cases unfit for publication, so they would abstain from reporting those cases which this clause would say were unfit.

2013. Generally speaking, these objectionable details which are published in very few of the newspapers are only published in reference to what are called society scandals, and things of that kind?—That is my view. I do not think with regard to the poorer classes they are often published, or that if they are published they are read.

2014. It is just in that class of case, I understand, if it is once known that the editor would be fined by the court for publishing objectionable details, he would have no difficulty in suppressing what any reasonable being would know ought not to be published?—It is mere speculation, but I should guess that he would be glad to have that pressure put upon him.

2015. To put all papers on the same level?—Yes.

2016. And to prevent the one who wants to conduct his paper properly from—in order to compete with his neighbour—having recourse to objectionable methods?—Yes, that is my view.

2017. (*Mr. Burt.*) I understood you to say that drinking is diminishing as a cause of applications for divorce?—My impression, from my experience, is that there is not so much drinking as there used to be. The charges of drunkenness in the morning are nothing like so numerous as when I was first appointed a magistrate, and growing up there is a young generation amongst whom one is glad to see numbers of men who are able to say with truth that they are absolutely

teetotallers. I am sorry to say, to be quite fair, that other faults crop up, such as gambling, to take the place of drink. There is a great deal of gambling in my district, which causes waste of money and other evils, betting and gambling.

2018. Have you any statistics on the subject of drinking or gambling?—I have not come prepared with them. I am sorry.

2019. I see in the table you have given it is under the heading of "Habitual Drunkard"—Yes.

2020. I suppose that will cover nearly all the cases arising from intemperance which come before you?—I am afraid I do not quite appreciate your question.

2021. In the table you have given numbers under the heading of "Habitual Drunkards"?—Separations on the ground of habitual drunkenness.

2022. I mean I suppose there are a good many cases which come before you that would not come under the heading of "Habitual Drunkards," and yet they are due to intemperance?—Yes, a great many.

2023. And a good many cases arising from intemperance probably come before you?—A great many indeed.

2024. (*Mrs. Tennant.*) You say a woman is often driven to the workhouse as the result of a separation order. Can you explain why the guardians seem able to recover the alimony more successfully than the woman herself?—I will explain in a moment. The guardians have power under the Vagrant Act, where a wife and children become chargeable to the rates and are in the workhouse, to have the husband brought up for punishment for neglecting to maintain his wife and family, and the moment she goes into the workhouse she becomes chargeable, and they come and ask me for a warrant, which is granted. He is brought up for neglecting to maintain his wife, or for deserting his wife, both of which are offences under the Vagrant Act, and he is sent to gaol for the violation of the Vagrant Act. If at the same time there are arrears he can also have a summons served upon him for the arrears, and also be imprisoned for the arrears.

2025. I do not know if there is enough married women labour in your district to produce many cases under section 61 of the Factory Act, the section which requires a certain period to elapse before the woman returns to work after child-birth?—I should think there are a great many. They are very much employed in sack-making and jam factories in my district. There is a great employment of female labour, and, I am sorry to say, casual labour, where they take them on like dock labourers at the gates, the first who come are taken on, and they go to work very young at undesirable work.

2026. Can you recall having had cases under that section, proceeding against the mother for returning to work?—I do not think I have had one since the Act came into operation.

2027. (*Sir Lewis Dibdin.*) You take a strong view of the gravity of divorce cases, and the importance of their being tried before the most competent tribunal that could be made?—That just expresses my view. I think they are exceedingly serious, both for the parties and for the community.

2028. Your view, I understand, is that with existing tribunals, if there is to be a local court, the county court is the best?—I think so.

2029. Have you had before your mind for consideration an idea that was broached here a day or two ago by Mr. Justice Bargrave Deane, of arranging local courts from the High Court, either by one of the existing judges, or an additional judge appointed of the High Court, the Probate Division, going down to a certain number of centres and hearing cases locally, with proper arrangement of fees, and so on, to make it cheap?—I should have thought perhaps the ordinary circuit judges, who go a good deal over England, could deal with the divorce cases as soon as sending a judge down.

2030. The difference is this: the ordinary judge of the King's Bench Division has no divorce experience. I think Mr. Justice Deane's proposal was based on a special knowledge being required, and experience, and so on, in this particular kind of work. What I wanted to put to you was whether you had considered that idea, and, if so, what was your opinion about it?—I am afraid I have not considered that idea: it is rather beyond my province. I have not to deal with what I may call High Court divorce, I am merely thinking of the poor divorce.

2031. It was a suggested means of meeting the demand for local courts to deal with poor cases?—That a special Divorce Court judge should go to particular local centres?

2032. That one of the Divorce Court judges, which might entail the appointment of additional judges, should deal with the matter on account of its great importance?—The distance from the applicant's home and that centre, I expect, would generally be found to be greater than the distance from the applicant's home to the nearest county court.

2033. Yes, there is that; but short of that do you see any objection to that plan?—None whatever, the best tribunal that could be provided, I say, for the money, I mean, of course, for the fees.

2034. Your view is that the best tribunal that can be provided cannot be too good for such an important matter?—That is precisely my view. I wish everybody who sues for a divorce to go to the High Court if they can, but they cannot.

2035. You have suggested that there should be one county court in London especially concerned with divorce?—It seems to me that would be desirable.

2036. I just want to ask you in passing—I do not want to labour it—what would be the advantage of that special court over the Divorce Court in the High Court in London—for London purposes?—I suppose the High Court would not hear the parties in person.

2037. Yes?—I was not aware of that.

2038. Lord Gorell knows there is no objection to parties appearing in person in the Divorce Court?

(*Chairman.*) None, whatever. I think I said the other day I found some of these parties in person *in formâ pauperis* did their cases much quicker than a counsel, but that was not opposed cases. If opposed, they are of interminable length.

2039. (*Sir Lewis Dibdin.*) Possibly the question of fees and expense could be met (I think we all appreciate that is a very serious point, as to the expense of proceedings for the poor), and supposing that difficulty were met, the court in London would deal with London cases, at any rate, as well as a special county court in London?—Yes, certainly. Might I say one word about expenses. The expenses of proceedings in the police court in London are very trifling. The woman pays 2*s.* for the summons. She is not compelled to pay that if we like to remit it, as we do. Then there are 2*s.* for the order, so that the costs are 4*s.*, but the people are in such a state that they can scarcely pay any larger sum in my district.

2040. I want to ask you a little more at length about separation orders and magistrates' courts. With regard to the county court, I think your view is, that not only in the county court, but in any local court, there would be very serious danger of collusion between the parties?—I think so.

2041. I suppose it is possible, is it not, to make divorce too easy?—I should be afraid so.

2042. It might have the effect of encouraging what I think you call experimental marriages?—I think it would, indeed. I think the young people would say: "We marry, and we can get out of it if we do not like it," which would be a terrible evil in this country.

2043. That would have a demoralising effect on society?—I think we have derived great advantages from what I may call the firmness of the marriage tie in England, and I should be sorry to see it weakened.

2044. Is it your experience that the poorer classes are not at present at all indifferent to the binding nature of the marriage tie?—My experience, I am glad to say, is that they are by no means indifferent. There is a very wide distinction between a certain set of society and the poorer classes in that respect.

2045. I want to ask you about separation orders. I think there are about 7,000 granted in the year?—I believe so.

2046. I suppose it would be altogether inaccurate to regard those as all cases of what I may call potential divorce?—Quite.

2047. I suppose there are a great many cases that, at any rate, under any view of the law you would be in favour of, should never be divorces at all?—A great many.

2048. With regard to the orders that you make yourself; would it be right to say a small proportion of them are only cases where, if you had the power to divorce, you would grant divorce?—Yes, I think so.

2049. I think you have told us that applications are often made, especially by young married people, in a very hasty way?—Very hasty, and I often have the case, where I plainly discern, after cross-examining the applicant, that she herself is more or less satisfied with her husband; but she is put up by her parents, who are dissatisfied with him, to complain of very trifling grievances.

2050. In those cases, I suppose, the efforts which you have described yourself as making, as a magistrate, towards reconciliation, are generally successful?—I am happy to say very often.

2051. It would be a miserable thing in a case like that if the parties were divorced?—I think so, and that is why I am so anxious that divorce cases should be thoroughly investigated by the tribunal before which they come.

2052. In these cases for separation orders coming now before the magistrates—I am speaking of magistrates like yourself, metropolitan magistrates or stipendiaries—the poor treat you very much as their adviser and friend?—Yes, I think so. I do not think they stand in any kind of awe of us, and we are all "hail fellow, well met," if I may say so.

2053. Is it not true they come generally to you with their troubles, not only matrimonial troubles, but in their troubles generally?—They ask us all kinds of questions. My business in the morning is to answer all kinds of questions that have little to do with the criminal law, but a tradition has grown up with them that they should get advice from the police courts and the police magistrates. Whether you are competent to give the advice you are asked to give is another matter, but we give it to the best of our ability.

2054. In your opinion is that not a very useful function towards the poorer classes; I do not mean your own work personally, but in your experience?—I should think so.

2055. Does not the fact that the magistrate is so trusted give him, first of all, a very special knowledge of the class we are speaking of; and, secondly, a very special influence with them?—I think so.

2056. Would you be in favour of the removal of the whole of that jurisdiction from the magistrate to the county court?—Well, theoretically, I think I ought to say yes to that, that the whole jurisdiction had better go ——

2057. But practically?—But practically, perhaps not.

2058. To the county court judge, from the nature of his work?—I may say we have been given this jurisdiction by Act of Parliament. We have exercised it for a considerable time, and I think it would be perhaps a break, and might have disadvantages, if the whole was taken from us and given to the county court judges.

2059. The county court judge, from the nature of his work, does not come so much in contact with the intimate affairs of the poor as the metropolitan police magistrate?—I once frequently sat as county court judge, and I do not think he does, quite so much.

2060. You have told us you think in some cases divorce would be desirable rather than separation, some of the cases of desertion which come before you in the police court. The case that was put to you, I think by the Chairman, was a case where the parties had only been separated a few days, and the wife in her fit or feeling of jealousy had come, when the husband had gone away, and said: "I want a separation order," and I think you pointed out how difficult it was always to refuse a separation order, although you knew that the desertion had been of a very brief duration?—Yes.

2061. In a case like that would it not be an extraordinary thing to grant a divorce on that application?—Yes.

(*Chairman.*) I do not think I made any such suggestion.

(*Sir Lewis Dibdin.*) I am not suggesting you had.

(*Chairman.*) You said I put that case.

2062. (*Sir Lewis Dibdin.*) You put the circumstances. You do not understand me to suggest that Lord Gorell thinks that would be a case for divorce I am quite sure he does not?—No.

2063. But those are the circumstances you, or Lord Gorell and you between you, framed. In a case like that would that be a case for divorce?—I think not.

2064. That is another instance where a separation order is granted in your view inevitably, and yet it is not a case for divorce at all?—Yes.

2065. You have dealt with the case of the imprisonment of the husband where he does not pay the maintenance allowance, and that is one of the hard cases, is it not, which, if persisted in, makes you think that divorce would be better in some cases?—Yes.

2066. I daresay it is my ignorance of the practice, but I want to ask you how would divorce mend that state of things. Let me put the case that is in my mind. Here is a wife with a family of children, and a separation order has been obtained with an allowance for maintenance; the maintenance is not paid, and the husband is imprisoned, and that state of things follows which you have described. How would a divorce mend the position of the wife there?—She would be able to marry again.

2067. Is that all? Is that what is in your mind as the remedy?—I am afraid, on the wife's part, that is the only remedy.

2068. Do you think, as a practical matter, that it would be very likely that a woman having a large family by her husband, and having got rid of her husband, would readily find another man willing, for the sake of having her as his wife, to take on the family too? Is that the sort of case that frequently arises among the poor?—Not frequently—occasionally. I have often found a widower with three children marry a widow with three.

2069. There there is a certain amount of equivalent shall I say. Do you think it is a case that would frequently occur, that a woman so left would find her family no obstacle to getting another husband?—If she was a capable working woman who had an income, and many of them do work, with children especially, as their children come off their hands I think she might often marry again.

2070. You have told us after these separation orders are granted it is your experience that the parties often come together again?—Yes. May I say that I have several times made a second separation order between the same parties.

2071. Showing they come together again in the interval?—Yes.

2072. In those cases where they come together again in the interval, that would be practically impossible if there had been a divorce?—I suppose they could come together again.

2073. Marry again?—Yes.

2074. Except in that very unusual event the opportunity of reconciliation would be gone?—Yes.

2075. I gather from the answers you made to my friend Mr. Isaacs, that it is not on the whole your view that separation orders to a large extent increase immorality?—I have the greatest difficulty, as I had with Mr. Isaacs, in dealing with that, because it is so hard to judge of the morality of the district.

2076. May I take it that in the very poor class, which I think you have very largely to do with —— ?—Yes.

2077. The question of divorce would not loom very large? I mean if a man and wife wanted to separate and form new connections, they would form them?—Yes, and yet marriage goes for much with the poorer classes. You would be surprised if you were brought more into contact with them, or as much as I am, how much they think of the married woman as opposed to the woman who is living with somebody else.

2078. That is what you have told me before, and it agrees with what I have heard otherwise. Those are not quite the people as a rule who get these separation orders?—The separation orders are got by very respectable people, with great regard to their marriage tie, and yet they come. A respectable man and a respectable woman will both come and get separation orders.

2079. May I take it that the result of your evidence as a whole is that you would not be in favour of making it very easy to get divorce, but you would be very much in favour of such a procedure as would prevent lack of means and poverty being any bar to divorce?—That very much expresses my view.

2080. I want to ask you a question about the newspapers. You surprise me by saying that the very poor do not read the papers. Does that apply to Sunday papers? Do they not read Sunday papers?—I really do not know. I had in my mind the young, and I do not think the young in any class read newspapers much, and I do not think in the poorer class they read them at all, but it is mere guess-work.

2081. By "reading" you do not mean the buying of the evening paper for the betting?—They do that.

2082. And Sunday papers: do they not read the Sunday papers? I do not want to press you?—I would answer at once if I could, but I cannot, because I do not know.

2083. You are aware, are you not, that although the bulk of the Press is entirely, if I may say so, blameless in this matter, there are papers, and I think I am right in saying expecially Sunday papers, which make a particular feature of stories from the Divorce Court? I think I am quoting the heading of an article that appears in one of the Sunday papers?—I do not happen to see those papers, but I believe there are such.

2084. Does it occur to you that such a form of publication, a sort of tit-bits out of the Divorce Court, is likely to be detrimental to public morals?—I feel perfectly sure of it. If I might express myself so strongly, I should say that it suggests to the younger classes the damnable doctrine of "Others do it."

2085. Is there not a very great difficulty in the way of the Press in stopping that kind of thing unless it is made illegal and stopped altogether? I mean in the condition of competition of one paper with another, is it not extremely difficult for a newspaper which does not of itself desire to pander to low tastes, unless it was made illegal?—I think many newspapers would be glad of a kind of prohibition of that sort.

2086. (*Judge Tindal Atkinson.*) I understand in cases where there is persistent desertion on the part of the man, and where he does not maintain his wife under an order of separation, you think divorce would be better?—Yes.

2087. It is put to you that women with several children would not be likely to find another husband. In your experience as the children grow up they become a source of profit to the parents in going out and getting work and contributing to the common fund?—They do, indeed. I am sorry to say in my district they are put at an early age to unskilled employment.

2088. Which, no doubt, is a misfortune, but still that is the case, that children when they get to be 16 or 17 years of age become a source of profit to the parents?—They do, and often they are very good to their parents. They take a pride in bringing home to their mother their wages, and they are very sentimental about it, and very good, often excellent children to their parents.

2089. If you can get the Treasury to supply a sufficient number of High Court judges to do the divorce work for all the poor people in this country it would be a thing highly desirable to be accomplished, would it not?—The hypothesis is so difficult!

2090. I mean in respect of the poor, not in respect of the taxpayers?—I think it would be.

2091. There is another thing I want to ask you upon that question. Is it not a very considerable difficulty for witnesses who belong to the working classes to go any great distance from where they are doing their work, and to be kept perhaps two or three days, to keep their work together, that they would lose by it?—Yes. In my district they could not afford to spend two or three days about a case.

2092. Would it be a very serious thing for those workmen or those people who would have to be witnesses, to travel 25, 50, or even 100 miles to give evidence in a divorce case?—It would be practically impossible, I think. My experience is metropolitan, where they could easily move by a penny tram about the Metropolis. About the country I should not like to say.

2093. They could not do it?—I should think they could not do it.

2094. With reference to a county court judge being appointed to do the divorce business in London amongst the poorer classes, would there be any necessity for him to sit in any particular place? Could he not travel from one county court to another in the different metropolitan districts, and be within the reach of the people? Do you see any difficulty in that?—Do you mean in addition to the ordinary judge of the particular courts?

2095. Take it you appoint one county court judge to do the divorce work in London?—Yes.

2096. There are a certain number of metropolitan districts?—Yes.

2097. In which there are a certain number of courts?—Yes.

2098. Or a sufficient court could be provided. Would there be any difficulty in this metropolitan divorce judge travelling into every metropolitan district and administering justice in the district?—If the court is vacant for him to sit at the right time.

2099. All that would be necessary would be a place for him to sit, and provided a place to sit, he could administer divorce justice in every metropolitan district in London?—That would be a great improvement on my suggestion, subject to this: you would probably have advocates, in cases that would carry advocates, experienced in divorce in the central county court for divorce which you would not have in the ordinary county court.

2100. I think you would find those advocates would travel with the judge and go to his courts?—Very possibly.

2101. You say if you give facilities for divorce that that increases the chances of collusion?—Yes.

2102. And also may have the effect of producing what you call experimental marriages?—Yes.

2103. Would not that be precisely the same if those cases were tried before a High Court judge as well as in a county court?—Yes—I must answer, yes.

2104. As regards collusion, you say you have no doubt you know there are cases before you in which there is collusion?—Yes.

2105. Do you find it extremely difficult to detect?—Extremely difficult to detect.

2106. It is almost impossible for anybody to detect except from outside information?—I am not quite prepared to say that. A rigorous examination of the parties will generally disclose it. As to the poor people, they are frank in a way, and rather undesigning, and I think it could be got from the people themselves when possibly there might be more difficulty in getting at it if advocates were engaged in a case.

2107. Do you think a county court judge might be as capable as yourself in getting at those cases of collusion?—I should think so, quite.

(*Sir Lewis Dibdin.*) With the same experience.

2108. (*Judge Tindal Atkinson.*) Then with regard to experience, I suppose after a certain time each county court judge in his district trying divorce cases would get experience of divorce business?—Yes.

2109. And would be equally capable in regard to trying divorce cases, but not perhaps to the same extent in disposing of the business as a High Court judge?

(*Chairman.*) Are we not rather getting upon a matter of argument than upon a fact to which the witness can speak?

2110. (*Judge Tindal Atkinson.*) Perhaps. Do you find with reference to these separation orders that the summons is very often sufficient to bring the man to his senses? They do not come to the court?—Yes, a certain number of summonses are issued that we

hear no more of, and the answer when called on is "No parties."

2111. (*Mr. Brierley.*) Do you find that in the case of desertion chiefly?—More in desertion.

2112. That when you grant a summons for desertion you very often hear no more about it?—Very often you hear no more about it.

2113. The inference being that the husband has been brought up sharp by the summons and has returned?—Yes.

2114. You have held your present office long enough to have had some experience of the state of things existing before the Act of 1895?—Yes.

2115. At that time you only had power to grant a separation in cases of aggravated assault, and to grant a maintenance order in cases of desertion?—That was so.

2116. Is there any special advantage in a separation order being granted in a case of desertion not accompanied by cruelty? It is rather a large power for this court of summary jurisdiction to possess, because it is very much a matter for the High Court?—Yes.

2117. It is a power to grant a judicial separation in the case of desertion, however short, whereas the High Court only possesses it in cases of desertion of two years?—Yes.

2118. Is there any reason why the courts of summary jurisdiction should possess that power?—It brings about the return of the husband.

2119. Does it? Does not the fact of granting the separation rather do away with the chances of the return of the husband as compared with the granting of a maintenance order?—Given through the power in the Act.

2120. You had the power, during the first three years of your term as a magistrate, of granting a maintenance order only, without granting a separation order, in the case of desertion. Do you feel that any advantage has accrued to you in being able to grant a separation in addition to an order for maintenance?—I do not think I do.

2121. You did suggest that you thought the word "persistent" ought to be struck out, or that it would be advisable for it to be struck out?—For some other word to be put in. My difficulty is in saying what is persistent cruelty.

2122. Is it not possible, unless you had some word of that kind, that these orders might be granted on even more trivial grounds, I do not say by you, of course, than they perhaps are by some of the magistrates in the country?—Very likely.

2123. I do not say it would make a difference to you, but it might lead to separations being granted on still more trivial grounds than they are sometimes at present?—I am afraid so.

2124. Assuming the jurisdiction in divorce to be extended to the county courts, whether the law remains the same as at present or is altered, you think there would be the necessity still for retaining the present jurisdiction of courts of summary jurisdiction?—I think perhaps it would be better.

2125. You find that there are many persons who apply for these separation orders, who would not be able even to avail themselves of the county court, on the ground of lack of means?—In my district that is so.

2126. Do you not find a good many women are absolutely without even the means of taking out a summons in the police court?—I do.

2127. And you have to grant them free?—I frequently do.

2128. Still you are in favour, at least, I understood you were in favour of a separation order being granted in the first place for a limited time?—Yes.

2129. Whether it be three or six months. That would enable the wife to attempt to obtain the means of proceeding in the county court?—Yes, I think that would be a most desirable change.

2130. It would enable her, at any rate, to collect the means of proceeding in the county court, or, if not, on coming again to the court of summary jurisdiction and showing fresh grounds, for the continuance of the order?—Yes, or making it up with her husband.

2131. Which you agree occurs very frequently?—Very frequently.

2132. With regard to extending the jurisdiction to the county courts, do you find that husbands often apply to you for relief against their wives which you find you are not able to give them?—Very often.

2133. They, of course, have no rights except in the case of habitual drunkenness?—None.

2134. That you find a matter very difficult of proof?—It would delay the Commission, but I had an application made by a husband yesterday morning of rather a strange kind, complaining of the language used to him by his wife. He repeated the language. It would be impossible to repeat it here, and I had no doubt whatever she used those words to him, and he said, "It "is intolerable: I must strike." I said, "No, you must "not do anything of the sort." He said he was a teetotaller and a life abstainer. Not only did she use that language which he repeated to me, and it is obscene to the last degree, but the married daughter was incited by her to speak in the same terms, and he repeated the words used by the married daughter. I cannot describe to you how bad they were. What could he do? I said, "I can give you no redress." He said, "I know I "shall strike her and be brought before you." I said, "Do not do that," and we parted.

2135. I do not know that those are circumstances which would entitle him to go to the Divorce Court, but I rather meant, are there not a good many cases where the husbands apply to see if they can get any relief in cases where they might be able to apply to the Divorce Court if they were able to do so?—Yes, in many cases.

2136. (*Chairman.*) There are one or two points your examination has suggested which I would like to ask you about. In the table of statistics you give your total cases for 1905 as 113, and the total cases for 1909 as 62; that is less than half?—Yes.

2137. It seems to me that it is a more or less diminishing figure?—Yes.

2138. Have you any explanation to offer for that, as to why you think that very large diminution has taken place?—Yes. The magistrates in that time have changed, and magistrates take different views about the application of this Act of Parliament. For one period of the time Mr. Chapman, my present colleague, was the magistrate, who takes, if I may say so, a chivalrous view of it with regard to the applicants. At another time Mr. Baggallay, who takes a somewhat sterner view, succeeded him, and I have been there with both of them, first with Mr. Chapman and then with Mr. Baggallay, and now again with Mr. Chapman, who has returned to me as my colleague, and my view is rather sterner than that taken by Mr. Chapman, and I think the difference in the magistrates more than anything else accounts for the difference in the figures.

2139. For instance, in 1907 the figure was 124, and in 1908 it was 86?—Yes. Alterations in trade rather affect the figures, but I think the main difference is the views taken by the particular magistrates who sit at that court.

2140. That is remarkable as a difference of view taken by stipendiary magistrates?—Yes.

2141. We might find it even more exaggerated when we get to the country. I do not know how that is. That is your explanation of those figures?—That is so.

2142. It is very remarkable. That is one point, the other point suggested by an answer you made is about these very early marriages?—Yes.

2143. Have you formed any opinion as to whether any steps might be with advantage taken to ensure more thoughtfulness on entering into marriage?—That is a social question which I have not considered.

2144. You rather put that forward as one of the grounds why you find these people so soon in trouble?—Yes.

2145. Has it occurred to you to suggest anything that will tend to mitigate that?—There is much to be said for early marriage from one point of view, but inconsiderate early marriage is objectionable. The home life is often very undesirable, and they are glad to go to what they think will be a more comfortable home which they hope they can make, and perhaps ingrained habits do not permit them to make it. The women in my district, as far as I can judge, are badly brought up for domestic duties. I should think they were very imperfectly educated as far as domestic duties are concerned, quite inferior to children in the country.

2146. You would rather rely on general social improvement than make any specific recommendation?—Quite so. That is just what I should like to say.

2147. With regard to these cases of orders which are carried out by imprisonment, are you able to tell us how many there are of that character—for instance in your total, whether it is rare or frequent?—I am sorry to say I have not brought that figure with me: I wish I had. You mean the number of committals on separation orders.

2148. Yes?—I can only say that it is a matter of almost daily occurrence: there are a good number of committals on the particular orders.

2149. The operation of them is to deprive the husband for the time being of earning anything?—Yes, it has a disastrous effect.

2150. I wanted to see whether that remedy is one that should be altered in any way in your view?—For the careless man who will not keep his wife I am afraid there is nothing for it but imprisonment. I am sorry to say I have men, dock labourers, brought before me by the parish nearly every week, and I have to send the men to gaol for two or three months for wilfully and persistently neglecting their families, making no effort whatever to keep them, and they are prosecuted either for desertion, when they can have three months imprisonment, or for neglecting to maintain, when they can have one month. I am every week sending them to gaol.

2151. It does not seem to produce any advantageous result?—It does not.

2152. Have you considered any scheme for making an order which could be served on the employer of a man of that character, to pay so much of his wages to the wife, whenever he could be served?—It would be a very great improvement in the law.

2153. The object of these orders is to get money for the wife?—Yes.

2154. I cannot see myself at present how it is got by imprisonment?—Because he will pay next time. He generally will pay after one term of imprisonment, and that is the only justification for it.

2155. Have you any suggestion to make to us which would in any way suggest an alteration?—I should like to adopt your Lordship's suggestion, namely, that there should be some power of serving notice on the employer, as it were, attaching part of his wages for the purpose.

2156. (*Sir Lewis Dibdin.*) Do you, as a matter of fact, make orders of committal in cases where it is not proved to you that the man has means to pay?—We seldom go into the question of means. We ask, "Have you any goods?" and if he has no goods we commit him.

2157. If he has no goods you commit him?—And he rarely has any goods.

2158. (*Chairman.*) We have had this point before us in the divisional court; the goods of the man that are useful in the case are his hands, the manual power of earning?—Yes, that is his ability; he can use his hands if he likes.

2159. Have you any further suggestions on that point except the possibility of attachment?—No, I am afraid I have not.

2160. One other point is suggested to me. Do the cases that come before you disclose any prevalence of disease of the character which is material in these cases?—I had a case yesterday morning, if I may refer to an actual case of rather a distressing kind.

2161. I do not think we want the details?—I will avoid the details. I had better, perhaps, say I had a case yesterday morning of that kind.

2162. You do get cases where those diseases are mentioned?—Yes.

2163. Do you find they are the grounds of applications which are made to you by wives?—Yes, sometimes.

2164. Are they put forward as cases of cruelty, or on what ground?—They are put forward as cases of cruelty.

2165. You find that?—I find that. They are not very frequent, but I find that.

2166. There is one further question on that. The general effect of a good deal of what you have said is that the magistrates, by their persuasion, do succeed in bringing parties together?—I think so.

2167. And also you find that in many cases the parties return together as the result of the orders?—In many cases.

2168. There are cases, I gather, also in which there is persistent separation, no return?—No return.

2169. With regard to the first class, where there is a possibility or a hope of reconciliation, do I understand you to think that if orders are applied for they might be made for temporary periods, for a time?—I think they might with great advantage.

2170. If it was hopeless I should like you to express definitely your view as to what you think ought to be done, whether you think they should be simply separated or whether they should have the opportunity of divorce?—I think they ought to have the opportunity of divorce.

2171. There is one point on some of the answers made to Mr. Isaacs. I daresay there would be a certain state of things in which you might find a guilty party or both guilty parties?—Yes.

2172. You have pointed out that the separation orders might still produce results, or be found to do so before there are the results of guilt on one side or on both sides. You remember the questions that were put to you?—Yes.

2173. Would your answer about the possibility of giving temporary separations and turning those into divorce apply to that class of difference?—Yes, it does.

2174. It seems to come to this, that every effort should be made to reconcile, either by the magistrate, or by temporary orders, but that if that is impossible and life together impossible, and adequate grounds exist, you would favour divorce?—That is exactly my view.

2175. And not permanent separation?—That is so.

2176. (*Mr. Brierley.*) As to the enforcement of the orders, do you find the fact that those orders cannot be enforced until after the expiration of one month creates any difficulty to the wife?—It does. She has to drag along for a month before she can take proceedings.

2177. It is possible, if she were able to enforce them before the month, the chances of getting paid would be better?—They would.

(*Sir Lewis Dibdin.*) You mean affiliation orders?

(*Mr. Brierley.*) They cannot be enforced until one month after they are made.

2178. (*Chairman.*) Those orders cannot. Is that so?—Yes.

2179. The first month they go without anything?—Yes.

(*Sir Lewis Dibdin.*) An affiliation order cannot be enforced for a month, and that works very badly.

(*Chairman.*) You would suggest some alteration about that?

2180. (*Mr. Brierley.*) There has been a Select Committee inquiring into the Bastardy Laws, which has been sitting lately, and they have recommended that the period of one month should be reduced to seven days?—I think that is an excellent recommenda-

tion. It is a difficulty. The poor woman has to drag on as best she can, borrowing and pawning her things for a month before she can take proceedings under the order.

2181. And having to wait a month means also the sum has risen to an amount which possibly he is unable to pay?—Quite so.

2182. (*Chairman.*) Supposing this Act were left untouched as regards the position of the wife, would you recommend any alteration as regards the position of the husband who cannot proceed at all in the police court except for habitual drunkenness?—He certainly ought to have remedies against his wife equivalent to those she has against him.

(*Chairman.*) I ought to thank you very much on behalf of the Committee and the Commission for your evidence, and the careful way in which it has been given.

Table of Statistics supplied by Mr. Rose.

SEPARATION ORDERS granted at Tower Bridge Police Court during the five years ending 31st December 1909.

Year.	Desertion.	Personal Cruelty.	Failure to Maintain.	Habitual Drunkards.	Aggravated Assaults.	Total.
1905	60	27	9	14	3	113
1906	59	21	18	22	5	125
1907	63	23	14	20	4	124
1908	36	12	10	23	5	86
1909	37	12	8	3	2	62
Total	255	95	59	82	19	

His Honour Judge DAVID FENWICK STEAVENSON called and examined.

2183. (*Chairman.*) You are a county court judge on circuit No. 3?—I am.

2184. Which district does that include?—Cumberland and Westmorland, part of Northumberland, part of Lancashire, and part of Yorkshire. I have been a judge for nearly 19 years.

2185. Always in that district?—Always in that district.

2186. Speaking first in general terms, what is your view about the county courts having jurisdiction in divorce cases?—I think that if divorce is to be taken in the country, in my opinion the only court that really ought to administer it is the county court.

2187. You say there are four classes of courts that might exercise such jurisdiction, the assizes, the county courts, the recorders, the unpaid magistrates, and the stipendiaries?—Yes.

2188. You have reasons in your notes why you think the county courts should have the jurisdiction, assuming it to be preferred to any local court?—With regard to assizes, I think the cost would be too great to enable the poor to resort to the court. With regard to the recorders, I think that they sit at too great intervals. They have no offices and they have no officers; the officers of the recorders are the officers of the corporation for which they act as recorders. The unpaid magistrates are, of course, unskilled in the law and do not give their attention to it, and therefore they cannot be expected to administer the law. With regard to the stipendiaries, I think they are perfectly capable, as capable as the county court judges of administering the law, but again there would have to be officers of the court to carry on the work, and on the whole, subject to some suggestions I have put down later on, I think that it ought to come to the county court.

2189. As to stipendiaries, you say they have no offices, and no staff of clerks. Is that so?—In the country they have clerks engaged in getting out summonses, and so on, but they have no machinery for carrying out orders which are made in the Divorce Court.

2190. On the whole, therefore, if jurisdiction were to be conferred to be exercised in the country, your view is in favour of it being exercised by the county courts?—I think so.

2191. I think you said there were some observations you wished to make upon the point of qualification?—As to the stipendiaries, yes. With regard to the stipendiaries, they are accustomed to deal with assaults and cases of that sort, and I think that they would be more efficient in dealing with them. If the county court had to deal with assaults it would be swamped; there would be so many of them that the county courts could not do it without the addition of more judges. On the whole my view is that if they were to deal with assaults and cases of that sort, after a time the case might come into the county court for divorce or separation, which I am very much against, but I think the parties should have time to consider. The magistratse, I think, should deal with the assaults and the other matters they now deal with, and after a time, when the parties have had time to consider their position (we have heard already it often results in their returning to each other, a very desirable thing if it can be done), then they might come to the county court, and if the county court had a *précis* of the evidence it might go into the evidence if necessary—it would not be necessary in many cases—and, if it was so advised, grant divorce.

2192. I rather gather you would be in favour of limiting the magistrates' powers as to making temporary orders for separation?—I think so.

2193. You think the parties should apply to the civil court when they want a permanent order?—When they have had time to consider their position.

2194. With regard to the county courts, your note deals with the question of whether they could cope with the work?—Yes. If we had to try assaults and matters of that sort, I do not think the county courts could cope with the work. I am told—I have made inquiry from some of my very small courts; most of my courts are small courts—and I have inquired from the magistrates' clerks, and I am sure that a county court judge like myself could not get to a place like Keswick two or three times a month to try an assault case, and putting them off is a great evil, of course.

2195. What do you say about *note* (*a*) in your proof?—They have the time, I think, in most cases, except the county court judges. I think if they do not deal with separation orders, which are now granted by the magistrates, they would have ample time to deal with divorce, except with regard to a certain number of county courts. For instance, the metropolitan county courts as a whole I do not think have the time.

2196. After all that only comes in if it is determined on the question of the staff?—Yes.

2197. As to cost what have you to say?—I have said as to costs, I do not think that divorce ought to be too cheap. I think if divorce was made very cheap—I shall mention figures if I may presently: they are not very large—people would for mere malice or a temporary unpleasantness apply to the court. I think it ought to be more serious, and I think the way to make it serious is to make a charge. I suggest a sum of three guineas (this only means court fees; cost of solicitor and witnesses would be anything from 3*l.* as a minimum upwards): it is not a large sum, but it is a sum which would make any working man consider, any man with a small wage—I need not say "working man"—any man getting a small weekly wage would take some time to save it, and it would prevent him making frivolous applications for divorce. I need not say how that three guineas is divided up: it is a matter for the future, but I think three guineas, which seems a small sum, yet is a large sum for poor people, would prevent frivolous applications.

2198. How would the wife who has no means, as is the case in most of the working class cases, be able to proceed with her suit?—I think the wife has charge of

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the purse in most cases, and would be just as well if not better able to save than the man.

2199. That would apply equally on both sides?—Yes, equally.

2200. The rest of that part of your proof deals with the forms which may be adopted?—Yes.

2201. It is sufficient here to tell us this. Do you think as a matter of fact any difficulty would be found, assuming jurisdiction were given to the county courts to deal with it?—Not the slightest. I think that the forms which I suggest would make it exceedingly simple.

2202. The facts, I rather gather from the proof which you have given, which you would expect to find in those cases would be short and simple?—I think so, very.

2203. Not involving the expense of detectives and that kind of thing?—Certainly not.

2204. That brings you, I understand, from your note, to what you think the limit of jurisdiction should be if it were conferred on county courts. Perhaps you will explain your views about that?—I think that the limit of jurisdiction will be very difficult to fix upon, and I think it introduces the question of uniformity of decision. I think that if the county court had initial jurisdiction in cases, we will say, where the weekly wage was only 2*l.*, and that is merely because of the expense, then I think they might deal with this initially; but when you get beyond that I think it would be better to have some method of acquainting a court in London, say the divorce registry, or one of the divorce judges, with the nature of the case, giving such particulars in a sworn affidavit, such affidavit to be approved by the registrar of the county court, to be made in the county court, the registrar to carefully look over it, and when he has seen that it presented a case which was a genuine case which might be considered in the court above, send it to the divorce court, and the divorce judge or the divorce registrar, that is not a question for me in the least. I think that might conduce to uniformity, which would be a very great difficulty with 52 county courts.

2205. In those cases the judge would have discretion to remit the case for trial to the county court. Is that what you are upon?—Yes.

2206. Fixing upon some limit, to begin with, with power to pass beyond it if the judge in London thought fit. Is that the point?—Yes, that is the point.

2207. You used the word "uniformity" just now. Have you anything to say as to any means of ensuring that, in case a number of judges were exercising jurisdiction about the country?—If I may express an opinion upon that point, I think that it is of the utmost importance that there should be, if possible, some codification of the law as it exists: that is to say, that there should be a divorce granted in such-and-such a case where the evidence is so-and-so. I think that might be done, and if it was codified in that way it would conduce to uniformity.

2208. That means a little more strict definition?—A little more strict definition. I think that is very essential with 52 judges.

2209. You also advocate a right of appeal. I do not think anybody disputes that?—Certainly, on the facts as well as the law.

2210. And, if necessary, a shorthand note to be taken?—Yes, that is very important.

2211. That is done now in all criminal trials?—Yes, and I think it ought to be done.

2212. What do you say about the present jurisdiction of the unpaid magistrates as to separation orders? I will ask you generally what you think is the effect of those orders in their results?—The effect of them, to deal with them first as far as I have listened to Mr. Rose giving evidence, and as far as I know, I think is very bad indeed.

2213. Will you tell us what you mean by that?—I think that the result is that you grant a separation order and the man has to go away. He must have somebody to take care of his home, as the man is out of his home from early morning till late in the evening. He must have somebody when he comes home to look after his home for him and his comforts, and that must be a woman. That being so, if there is a separation order, he has to get another woman to take care of his home. I do not think the results of that are good. Again, the woman, if she is separated from her husband, has to earn her living, get her living in some way. The money that is granted must be very small, and the result of that is, she may try to keep a small shop, which is always disastrous if she has no education or experience in the matter. The next thing she tries to do is to take lodgers; that would be men lodgers who could afford to pay, and I think that would be disastrous, too.

2214. That means, generally speaking, your view is that those orders tend to immorality?—I think so.

2215. Have you any remedy to suggest to meet that view?—The only remedy I can suggest is, that they should have more time to consider. I think, as we have heard to-day, sometimes they come within the first year of their marriage and apply for a separation order. I think if they first of all came before the magistrate and tried the question of assault, or whatever it may be, or desertion, and then took time to consider, I cannot help thinking—because I think the home is so essential, both for the man and the woman—they would come together again, and perhaps be more inclined to agree with each other.

2216. Does that mean the magistrate's power should be limited to an order for some few months?—Some short time. I fix upon six months for various reasons: one, that it is already fixed upon for the decree nisi being made absolute, but I by no means pledge myself to six months. I think a shorter period might be just as good, because the great thing to be obtained is to give them time to consider their position, and I feel quite confident that, in many cases, they would not desire a divorce or separation.

2217. If that temporary period did not result in reconciliation, what would be your proposal?—Then I think they should come before the county court, as I have said, and the county court judge should go into it as carefully as he possibly can, and consider the matter, both the evidence that was given in the police court or the stipendiary court, or the magistrates' court, and any other evidence that they might have. I attribute the very greatest importance to a private interview at the termination of the evidence between the county court judge in his private room with the parties. I have found it so advantageous in another class of cases that I am quite confident in matrimonial cases it might have the most beneficial results in bringing people together, and make them inclined to put up with each other's faults.

2218. What is your view about any order for permanent separation?—On the whole I think it ought never to be granted. I think it is a very serious thing. I think it is divorce or nothing. The result of separation orders is so often very disastrous, and having read your Lordship's judgment in a well-known case, I am against them entirely.

2219. That means, that where you think the parties could not reasonably be expected to come together you would grant divorce?—I would.

2220. I should like to ask you upon that; do you mean only on the present ground or on extended grounds?—I think extended grounds, decidedly. I think grounds for separation, desertion, and so on, if you are dealing with magistrates' courts, in all those cases. Where there is a superior court, although I do not pretend to know the law accurately of the superior court, it should be in the discretion of that court, subject to appeal; but if it is hopeless, if the misery is so great in the home, from whatever cause, real cause, I mean—cruelty or neglect to supply proper means of subsistence, or constant unfaithfulness—I think divorce certainly, and nothing else, ought to be granted.

2221. You have not specified those grounds in your proof with any distinctness?—I do not feel myself absolutely competent to express my grounds. I think those who have more experience of the Divorce Court than I have will express them much better than I am able to.

2222. You do not like permanent separation; where that is a necessary remedy you would prefer to see it converted into divorce?—That is so.

2223. As to the publication of reports, have you formed any opinion about that?—I feel so strongly that trials should be published, both as a deterrent to those who err and as a curb on those who have to administer justice, that I think it is better that they should be tried in public.

2224. That was not the question. The question was reporting a public trial?—As to reporting a public trial, I think if some remedy could be found for preventing spicy details, as it has been described, it would be very much better, and the remedy has been suggested to-day that the court should have power, if objectionable details are published, to punish the newspaper that published them.

2225. This is only a matter of opinion?—Yes.

2226. With regard to your experience of the Workmen's Compensation Act, have you come to any conclusion as to what would be useful in these matrimonial cases?—Yes. I have already alluded to it. Women come before me who are dependent upon the deceased person, and they tell me in open court a lot of things they would like to do; they have bought a house, and done various things, and want to pay it off. When they have told me all that, I say "Come into my private room," and the registrar accompanies me. I say "Tell me what you want to do with that money." They say "I want to buy my house with this money," and I say "If you buy the house your money will all be "gone, and you may marry again, and what will become "of your children? Do you not think it would be "better if you got it paid to you weekly or monthly," and I find that they are always amenable to reason. Therefore my experience with the Workmen's Compensation Act leads me to the conclusion that it is of the utmost importance that the judge should see the parties.

2227. As to another point, what is your view if jurisdiction were conferred, as has been suggested, on county courts, as to the trial before the judge alone or with a jury?—I am strongly in favour of trial by the judge alone. There are reasons which experience has taught me. To begin with, I think that there is a great deal of time wasted in a trial with a jury: a great many questions are asked which are never asked when the judge sits alone, the judge gets to the root of the matter, and if the judge is curbed by appeal I think it is better to try before the judge alone.

2228. I see from your note you say the statistics show how very few cases are tried with juries in the county courts?—I have not taken statistics out.

2229. We have them somewhere?—You have them in the last report for 1907. There are exceedingly few jury cases tried in relation to the immense number of cases that are tried. I think that in itself shows that there has been a certain amount of confidence in the administration of justice by the county court judge. I do not see why that should not be so if divorce cases went to them.

2230. The rest of your supplemental proof relates to the modes of proof. I think that is a matter of practice rather than of principle?—What one judge may consider sufficient proof of adultery another may not. It comes to this. If possible I think some rule should be laid down as to what amounts to proof of adultery.

2231. It is very difficult to do that?—It is very difficult, but it would be much worse if one judge in one district, say in Lancashire, grants a divorce on very slight evidence, and another in Cumberland will not grant it except he has absolute proof of a definite character.

2232. Do you see any difficulty in that being rectified by the Court of Appeal?—Yes, cost. We are dealing with very poor people.

2233. I suppose there must be even now many cases where the judges would differ upon the facts?—Yes.

2234. Here are the statistics: the cases before a judge number 38,617, and the cases before judge and jury number 929. That is for the whole of England. Before the registrar the number is 404,000. I think I have dealt with the principal points in your proof: is there anything you think I have not put to you which you desire to mention?—Nothing, I think.

2235. (*Judge Tindal Atkinson.*) I want your experience of the registrars and the officers of the different courts. Do you not find them an extremely efficient set of men?—I do.

2236. Are not the registrars the principal solicitors in the district?—They are, and of the greatest experience.

2237. Then with reference to the bailiffs, as a rule, are they not extremely reliable men?—As a rule they are and they have a most intimate knowledge of the district always.

2238. If it became necessary, supposing divorce jurisdiction was given for the purpose of getting it, either whether there was collusion or any other matter which inquiry was wanted about, could you not, as a rule, thoroughly rely on the integrity of the bailiff to get proper information?—I think I could.

2239. Your experience is very likely the same as mine, it is often necessary to use the bailiff for the purpose of getting information about individuals?—Certainly. One constantly refers to the bailiff. I call the bailiff up to my desk sometimes, and ask him, "Do you know anything about this man?" or "This "man says he is earning so-and-so. Do you know "anything about him?" I constantly do it.

2240. That being so, would the registrar, the clerk, and the bailiffs form an admirable start for the purpose of carrying out this divorce jurisdiction?—Most certainly. I think their knowledge of the immediate district is as perfect as the knowledge of any body of men in the district can be.

2241. Another matter is about the clerk. Supposing divorce jurisdiction is given to the county court, say it is the case of a wife, and she comes to the office. Would she get from the clerks every assistance that was necessary?—That is their duty now, and I presume it would be under an extended divorce jurisdiction.

2242. If any proceedings had to be filled up, would the clerk do that for the applicant?—It is his duty to do it, and he would do it, and he would get very experienced in it as time went on.

2243. In addition to that would the service of the proceedings be done by one of the bailiffs of the court without any expense to the parties?—That is so.

2244. In your opinion, apart from the question of expense, is locality of the very greatest importance to poor people?—You mean limited?

2245. The locality of the court to which they can resort?—Yes, I think that the distance is of the greatest importance, because distance means money. Of course travelling a great distance is much more expensive than travelling a short distance, and, moreover, the knowledge of the officers of the court only extends to their own district.

2246. I dare say your experience is the same as that of the other county court judges, that it is a great hardship upon witnesses to be taken to a great distance from their home and from their work?—It is a very great hardship.

2247. And involves them in very serious hardship, and in some cases ruinous loss?—Yes, dismissal.

2248. As regards the judges trying these divorce cases, we county court judges have to try divers matters and a great number of different sorts of litigation. There would be no difficulty, I imagine, in a short time in getting accustomed to the divorce proceeding?—I think none. I really place some importance on what I have already said, that there should be some codification if possible, so as to get uniformity amongst us.

2249. I will come to the question of the time which the courts can give to this sort of case if the jurisdiction is imposed upon them. If separation orders are not transferred to county courts you do not apprehend, with the exception of a few courts, that there would be any difficulty as regards time?—I do not think so. I have inquired carefully, and I do not think there would be many cases. In the first year or two there may be a good many. There may be a rush, but after that I do not think there will be many cases, for the

reason I have already given, the great importance of the home to both the working man and his wife. I do not think they will idly apply for divorce after a time.

2250. Without it being any great hardship to the judge, could some day be added to the number of days which a judge gives to his courts?—Yes. The circuits vary in size in the matter of distance. My travelling is the greatest amount of travelling in the kingdom, but still, with regard to that, I think that centres might be named, convenient centres, and then I see no difficulty in the way of any judge appointing special days for the trial of divorce cases.

2251. I dare say you know what the Committee of the House of Commons said upon the question of imprisonment for debt?—Yes.

2252. Supposing imprisonment for debt were abolished, would not that give a great economy of time to the judges all over the country?—It would.

2253. And more than compensate for the number of divorce cases they would have to try?—As far as we can tell, without any experience with regard to divorce, I think so.

2254. If the recommendation of the majority of the Committee of the House of Commons is carried out, that probably would reduce the committal summonses to about one half, or perhaps one quarter. Again, there is a saving of time in that way which would enable the judges to dispose of a good deal more work.

(*Chairman.*) Are these matters it is worth taking the opinion of the witness upon. These things speak for themselves. I only say this because I know Judge Steavenson is anxious to get away.

(*Judge Tindal Atkinson.*) The reason I put it is because some of the Commission, I do not think, know what the real nature of county court work is, and how it is carried out, and are under the impression that if divorce jurisdiction is granted to county courts they cannot possibly do it, because they have not time.

(*Chairman.*) That only comes to the question of adding to the number if necessary. If it is the right thing to do the country must do it. If it is the wrong thing to do it will not be done.

(*Judge Tindal Atkinson.*) I do not think I have anything further to ask.

2255. (*Sir Lewis Dibdin.*) I have hardly anything to ask you. Are there many separation orders granted in your district?—As regards that, without inquiring from each individual magistrate's court I cannot answer that question definitely, but I believe there are not many. It is a sparsely populated district.

2256. Westmorland?—Cumberland and Westmorland.

2257. In Westmorland one order was granted in the last year for which there are statistics ——

(*Mr. Brierley.*) You have left out Barrow.

2258. (*Sir Lewis Dibdin.*) In Cumberland there were 22, that makes 23. I cannot tell you about your bit of Lancashire, because Lancashire involves —— ?—Barrow and Ulverston.

2259. How many are granted there, can you tell me?—I cannot tell you.

2260. Probably more than —— ?—More than anywhere else on the whole circuit.

2261. We have got to 23. The whole number is not a large number?—No, but it would, I think, if you take 33 cases, considering one does not try them all in one centre, involve something like 20 days.

2262. Have you any reason to think, if divorce jurisdictions were extended to your county court, that there would be many applications?—No.

2263. Are there many divorce cases?—At present, very few indeed.

2264. I noticed at the beginning of your evidence you said, if it were considered right to take divorce in local courts you are in favour of county courts?—Yes.

2265. Have you any doubt as to the necessity of local courts for divorce?—No, I think for poor people [redacted] court that can try it is a local court. The [redacted]e time are absolutely beyond them; to give [redacted] and the money is completely beyond their [redacted]tion.

2266. So far as you are aware, there are not many cases?—At present.

2267. In Cumberland?—Very few.

2268. In your district?—At present very few indeed.

2269. If we may take the separation orders as any criterion or not, there are not many potential cases?—No, there are very few separation cases tried in the district, but it leaves out Barrow, which is my largest place. Supposing I am informed there is an urgent case at Ambleside—I live near Carlisle—I say "I must "appoint a day to hear that case." That is a day gone. So far as I am concerned, it occupies the whole day.

2270. Your mind is addressed to another point. I am on the number of cases?—Very few cases.

(*Chairman.*) What is the population of Barrow.

(*Mr. Brierley.*) 70,000.

(*Witness.*) I believe about 70,000 to 75,000.

(*Chairman.*) That is outside those figures you have been dealing with in Cumberland and Westmorland.

(*Sir Lewis Dibdin.*) Outside the 23.

2271. (*Mrs. Tennant.*) I take it your experience in Workmen's Compensation cases brings you very closely in touch with the workers?—Yes, very closely indeed. I have learned more of the poor and the struggle for existence by Workmen's Compensation cases than I have learned in the whole of my life.

2272. That would apply to other county court judges too?—I think so.

2273. So that the county court judge may be taken to be the workers' friend, in the same sense that the stipendiary magistrate may be taken to be the workers' friend?—I may say I feel very proud of being considered the friend of the poor.

2274. You heard Mr. Rose's suggestion of a county court in London for divorce cases especially. Do you approve of that suggestion?—I have so little experience, I can hardly express an opinion. It seems to me county court judges, as far as I can tell, would be unable to cope with the work, but some court must be appointed if the poor are to have divorce. I do not see why the superior court judge should not do it, he will be much more efficient as a rule, and much more used to the work, and the country can appoint another judge of the Divorce Court, if it becomes necessary.

2275. If you do not think it a good suggestion for London, do you think it would be more appropriate in a district like Manchester?—I think there are some other large towns, for instance, Leeds, Liverpool, Manchester, Birmingham, where probably the county court judge could not cope with the work.

(*Chairman.*) I think we are going to have a county court judge from Birmingham, his Honour Judge Ruegg.

2276. (*Mrs. Tennant.*) I think you said the woman generally has charge of the purse?—Yes.

2277. Would not that apply in cases rather more to lower middle class life than to actual working class life, more particularly to poor working class life?—It is a strange thing, and I am often very much astonished at it, but I constantly ask the question, "How much does your husband give you?" and I find, I may say in almost every case, that it is within 1*s.* or 2*s.* of the full amount of his wages. I have the wages before me, which they do not know. They do not know that I have a return from the employer, and I am looking at that when I say "How much does your husband give you?" and I am astonished how frequently, almost always, it is within 1*s.* or 2*s.* of the total wages.

2278. Is it not likely the husband from whom a woman would like to be relieved would not give her within 1*s.* or 2*s.* of his total wages?—Possibly.

2279. In that case would you consider it advisable to give discretion to whoever is the authority, say the county court judge, to grant a hearing of the case, if it were made clear the woman had not enough to pay three guineas?—As to the amount of money she was to pay?

2280. As to the payment of fees on her part?—Yes. Fees are a question which the Treasury will deal with, and they are a great authority. I can hardly express an opinion on the subject. Of course we could give

time, but if we did give time I am afraid that the Treasury would never get the money.

2281. It would mean a remission of the fees?—Yes; that would be suing *in formâ pauperis* certainly. The judge can give that power, but I have only given leave to sue in ordinary cases *in formâ pauperis* once in 19 years, or nearly 19 years. I have never been asked excepting once.

2282. I want to ask you a question which may seem outside your jurisdiction, in so far as it relates to divorce. It has been given strongly in evidence that any equality in the law between man and woman should be modified only in relation to continuous adultery or adultery inflicting indignity upon the wife, and the reasons given in support of that were, in the case of man, isolated acts prompted by temptation which did not arise in the case of a woman, and that in fact the woman did not commit adultery unless her moral standard were a low one when she would make an undesirable wife. In your experience in connection with debt, have you experience of the temptation of women similar to that which has come before me in industrial life?—I think I understand exactly what you wish to know. I am sorry to say it has come under my immediate personal notice more than once, that persons who cater for the poor, tallymen who sell their goods, almost force their goods upon the poor, and collect the money from week to week, have exposed women to the most serious temptation that a woman can be exposed to, namely, shé desires to get the debt paid because she is afraid of her husband, and the tallyman says, "If you will "permit —— I will excuse you so much debt," and I think that is a terrible position for a woman to be placed in.

2283. (*Chairman.*) Have you actually come across those cases?—I have come across them absolutely, and I have inquired from the bailiffs who can give cases. I was so shocked on one occasion to hear it that I went to the bailiffs in the principal courts and made personal inquiries, and they said, "Quite common." I was amazed, but there it is.

2284. (*Mr. Burt.*) You mentioned that in compensation cases the widow sometimes applies to have the amount awarded to her paid in a lump sum?—Yes.

2285. I understood you to say that you consider that is an undesirable thing to do as a rule?—Do you wish to know whether I think they ought to have it in a lump sum.

2286. Yes, I want your opinion on the point?—I can conceive circumstances where a lump sum would be of the very greatest importance, but all I can say is that in all the cases that have come under my immediate notice, when I have inquired thoroughly into it, I have considered that to get it by instalments is much better for the parties.

2287. (*Mr. Spender.*) When you said that publicity was a great safeguard you meant publication of reports as well as having an open court, that there might be a publication of reports in newspapers?—I did.

2288. That is your opinion?—Yes.

2289. You say here in the proof before me that whatever court tries the indictment should have the power to grant divorce or separation. I think I gather from you you prefer that, so far as divorce is concerned, that should go to the county court and not to the court of first instance?—As far as divorce is concerned. I am against separation orders; I think they tend to immorality.

2290. Your preference is for the county court over the court of first instance?—Certainly.

2291. (*Chairman.*) I believe you are a magistrate as well as a county court judge?—Yes, I sometimes act.

2292. In which district are you a magistrate?—I am a magistrate for all the counties, but I only act for my own immediate neighbourhood, my own home.

2293. Are you a magistrate for all the counties in which you are a county court judge, or how is that?—By reason of being a county court judge the Lord Chancellor puts one upon the roll of magistrates.

2294. You are a magistrate for all that district?—I am.

2295. I only ask that because your experience is not confined to that of a county court judge?—I have acted as a stipendiary before I became a county county judge for a considerable time—I acted for six months—and I have sat a good deal at quarter sessions, and I have been deputy recorder many times, and therefore I have had experience besides the county court.

(*Judge Tindal Atkinson.*) I see the number of inhabitants in Barrow is 97,100.

His Honour Judge Sir WILLIAM LUCIUS SELFE called and examined.

2296. (*Chairman.*) You are, I think, senior judge of the county court bench?—Not quite senior, the third.

2297. For the last 27 years you have sat as county court judge on circuits in Monmouth and Cardiff, East Kent, Marylebone, and West London?—That is so.

2298. Your evidence is mainly on the question of conferring jurisdiction on local courts?—Yes.

2299. You do not come as having experience as a magistrate or chairman of quarter sessions?—No.

2300. Before you get to the question of what courts should act if any change is to be made, will you deal with the question of the publication of reports; what is your view about that?—I am in favour of publishing only the names and the results without any details.

2301. You think the present system of publication does not lead to satisfactory results?—Not at all; I think it only panders to the curiosity of the mob, and so far as my experience goes, at any rate so far as the London papers are concerned, it deals only with what may be called society cases, thereby giving a very wrong impression as to the classes among whom unfaithfulness is rife.

2302. As to any amendments of the law as to procedure and practice, I observe you state you have no suggestions to offer. You put forward that you have no experience?—I have no suggestions to offer from practical experience, but I desire to associate myself with the suggestions I have heard to-day, that the definitions should be made clearer.

2303. You mean the suggestion made by Mr. Rose?—And, I think, by Judge Steavenson, more especially as regards cruelty. I was looking at a case last night which I think is one of very great importance, and that is the question whether immorality on the part of the husband openly flaunted in the face of the wife, which seriously affects her health, should not be sufficient to establish legal cruelty. It was decided to the contrary by Sir Charles Butt in a case with which your Lordship is familiar, "Beauclerk v. Beauclerk." In the Court of Appeal the point was not decided, because the petition was dismissed on the ground of delay. I think that circumstances such as are revealed in that case should be held to establish cruelty.

2304. Your note says that you have not practised in the court?—I have not had any experience in the court. All I know is from reading reports.

2305. Dealing with what you express in your note mainly about county courts and the suggestion about giving them jurisdiction, you express a hope that no such jurisdiction will be conferred?—I do.

2306. Will you state shortly the grounds upon which you express that hope?—The grounds upon which I express that hope are: first, as regards the question of costs, which are said to be prohibitive, and therefore prevent parties in poor circumstances resorting to the court, there has been no change in that respect since the Act of 1857 was passed; secondly, for my own part I have no reason to think that there is any general desire on the part of the poorer classes that the possibilities of divorce should be brought home to their doors; and thirdly, I do not desire to see further facilities given for the dissolution of the solemn contract of marriage.

2307. You go on in your note to give reasons for that conclusion?—Yes. I think if the Commission were to make inquiries of those who visit the labouring classes in their homes, and of the police court

missionaries, they would find that there is no general desire for the extension of those facilities. No doubt your Lordship has had complaints addressed to you in your capacity as President of the Divorce Court from people who feel it to be a hardship. I must assume that there are a certain number of cases in which it is felt to be a hardship, but I suppose nobody would consider that divorce is a desirable thing in itself, and I do not think that the facilities for it should be increased unless there is a general desire on the part of those who are at present said to be prohibited by cost from obtaining that relief, that it should be extended to them. I think in that connection the question on which the Commission have heard so much, and I have heard something to-day, of separation orders, should be considered.

2308. I was coming to separation orders, if you will exhaust the other part first?—I think that if divorce were made more easy the result would be that people would rush improvidently into proceedings, perhaps not on the best advice, in cases in which, if they had more time for consideration, they would adjust their differences and come together again. I saw it stated, I think yesterday, in the evidence of Sir George Lewis, that if proceedings were authorised in the county court a case would be heard in three weeks. I think he is wrong as regards the time in which a case could be heard, to begin with, but if it were so I think it would be most disastrous. I think the experience of those who are experienced in the Divorce Court is that persons who resort to that court do not do so until after very grave consideration, and if parties had the opportunity of proceeding by way of divorce close at hand, and rushed into it under a feeling probably of natural annoyance, that the results would be extremely disastrous in cases in which more consideration would induce the parties to take a more reasonable view of the situation.

2309. Are there any other evils you wish to mention?—Also there would be very great danger of collusion, which it would be extremely difficult, if not impossible, for the county courts to detect. That question, I see from the evidence that has already been given, might cease to be of great importance if the suggestions which have been put before the Commission, for divorce by mutual consent, were adopted, but so long as the law on collusion remains as it is, I think there is very great fear that it would be defeated by or evaded in proceedings in the county court.

2310. Would your view as to this point meet that class of case which we have heard mentioned, in which one of the parties had disappeared into a foreign country or colony, and the party left behind is very poor and in one of the manufacturing districts, say?—Of course not. It clearly would not meet cases of that kind.

2311. Have you any views as to how that class of case should be dealt with, whether a permanent desertion of that character should afford a ground of divorce?—Apart from infidelity?

2312. Or apart, at any rate, from the possibility of the proof of infidelity. The class of case mentioned by one or two witnesses was the husband or wife, as the case might be, disappearing to America or a colony and never being heard of—in some cases traced and in some cases not. Frequent cases of that kind were mentioned?—If they are not traced I should think that on the presumption of death which prevails in the courts after a person has not been heard of for a certain time, divorce should be allowed; as in present circumstances, re-marriage under those circumstances ceases to be a criminal offence. Bigamy after a disappearance of seven years ceases to be a criminal offence, although it does not confer the status of a wife when the husband turns up again, if he turns up.

2313. I am afraid I interrupted you on the point about separation orders which you next deal with. Will you tell us, generally speaking, your view as to the operation of the Act of 1895, and whether any change is desirable in that respect?—I think as regards that I can only echo what I have heard said to-day. Although I have sat for many years as magistrate and chairman of quarter sessions I have never had a case brought before me.

2314. Was your sitting in that capacity before the Act of 1895?—No, it commenced in 1893 and continued till I was removed to London. I have no practical experience of it, but from the evidence which has been given to-day and from what one sees in the papers, I think the effect of the Act has been disastrous. One of the chief reasons for it being so disastrous is that which was stated by Mr. Rose this morning, that a women could get a separation order for 4*s*. The effect of having a court within reach to which you can go and get an order of that kind under a feeling of natural irritation, caused perhaps by not consistent but occasional ill-treatment, generally owing to intoxication, seems to me to have been extremely disastrous.

2315. Your view would be to abolish or limit the power of granting separation orders?—Most distinctly.

2316. Rather than give further facilities for dissolution, or orders for separation?—Yes. I think if the Legislature made what is pretty well established to have been a wrong step, that is no reason for taking another wrong step, but rather for retracing their steps.

2317. Assuming local jurisdiction should be conferred, what is your view as to the establishment of any special tribunal or the use of the existing tribunals?—Upon that point I think I ought to confront your Lordship with your own memorandum, written in I forget what year, on the subject of the trial of cases at assizes. I have no doubt that has already been read, and I will not refer to it again unless you desire it.

2318. Is that the memorandum referred to in the county court committee of last year?—Yes.

2319. We have that report.

(*Sir Lewis Dibdin.*) We have not had it mentioned.

(*Chairman.*) It is referred to.

(*Sir Lewis Dibdin.*) Might the witness be allowed to give the substance of it?

(*Witness.*) If I may be allowed to read the report, it is as follows: "Weighty objections have been made " and will no doubt continue to be made by many to " conferring upon any other tribunal than the court " sitting in London any jurisdiction in these cases. " The substance of these may be conveniently stated " by quoting the following passages from the memo- " randum prepared by the late President of the court, " in 1896, approved by his predecessor the late Lord " St. Helier, and adopted by the committee of the " council of judges. These passages, which bear upon " the subject generally, though the memorandum was " prepared upon a proposal that Probate, Divorce and " Admiralty cases should be heard in Lancashire, are " as follows: 'It has hitherto been considered desirable " ' that all divorce cases should be tried before one " ' tribunal sitting permanently in London, and there " ' appear to be very serious considerations weighing " ' against any proposal to extend the trial of these " ' cases to different parts of the country, considerations " ' which seem to preponderate over the advantage to " ' some individuals of lessening expenses to be incurred " ' by them in these cases. Under the existing law of " ' divorce the court has to exercise its functions not " ' merely in the interest of the parties before it, but " ' of society at large, and it is important that the " ' judges who administer this branch of the law " ' should be thoroughly familiar with it, able to take " ' counsel together when necessary, should preserve " ' uniformity in the exercise of the large discretionary " ' powers conferred on the court, should be assisted " ' in guarding against collusion by a staff of officials " ' whose experience is of the greatest service to the " ' court, and should be aided by a bar familiar with " ' the mode of conducting this peculiar class of work, " ' I think it is highly undesirable to allow these cases " ' to be tried at the assizes?'"

2320. (*Chairman.*) That is the memorandum of what year?—1896, I gather.

2321. I think the report of last year had a different view, if you read on. Just read the few words that follow it?—The next few words are not in my memorandum.

2322. I could not quote it, but I thought it went on to say something about experience shows a change of view?—Yes. Then the report of last year goes on: "But experience, more especially that of late years, "and the results of the Summary Jurisdiction (Married "Women) Act of 1895, which had only come into "force shortly before the memorandum aforesaid was "drawn up, have led to modified views being entertained "upon this highly important question, so far as regards "cases in which the poverty of the parties prevents "them from having access to the Divorce Court, even "though suits *in formâ pauperis* may be brought "there."

2323. We have had that report circulated. You go on in your note to say that those arguments apply to the county court?—They apply in my judgment far more strongly to the county courts than to the judges of the High Court sitting at assizes. It must be remembered that the judges of the county courts are at present 55 in number. They are sitting constantly alone in different courts all over the country: they are not familiar with this branch of the law, and are less able to take counsel together than the judges of the High Court, so that they could not be expected to preserve uniformity in the exercise of the discretionary powers of the court, while their officials, able and experienced as many of them are in the ordinary work of the courts, would be of little service to them in this peculiar class of work. I fear, therefore, that the result of imposing this extremely irksome and delicate jurisdiction on the judges would be anything but satisfactory.*

2324. Would that difficulty of want of uniformity be met by conferring that special jurisdiction on a select number of judges who should take the whole of it?—Of course, the more the number of judges exercising the jurisdiction is reduced the more likely you are to arrive at uniformity, but I think it would be extremely difficult to select some judges only of the county courts to do that work.

2325. On the next point, do you think there would be a diminution of the expense of proceedings?—That point entirely depends on the scale that might be fixed. I was surprised to hear my colleague, Judge Steavenson, to-day suggest that the cost should be limited to three guineas. Assuming that to be possible, of course, a working man with nothing but his weekly wages to depend on would be able to raise the money to take proceedings, but it seems to me absolutely impossible to suppose that a divorce case could be conducted for such a sum as that. In the first place we have the Treasury to consider, and the Treasury, as is well known, looks to the fees of the suitors to pay a considerable proportion, probably the greater proportion, of the expenses of the courts. In an ordinary action in the county court the fees alone come to that amount, or nearly to that amount. That leaves nothing for a solicitor, and the expenses of witnesses. It seems to me that that is quite an impracticable idea. I think, in point of fact, that those who recommend it, who consider it would be a boon to the working classes to confer local jurisdiction in divorce cases, would find that the boon would be illusory in most cases on account of the cost. Your Lordship is, of course, familiar with the celebrated pronouncement of Mr. Justice Maule, which had a considerable effect on the passing of the Divorce Act of 1857, in the case in which he tried a man for bigamy, who had gone through the form of marriage with a woman after his first wife had left him for another man. After explaining to him what course he ought to have taken in bringing an action for criminal conversation, and presenting a Bill in the House of Lords for the dissolution of his marriage, with liberty to marry again, he made use of this observation: "It is true this would "have cost you some thousand pounds, whereas you "do not appear to be worth more than a thousand "pence." The 1,000*l.* limit, of course, was removed by the Divorce Act, but the 1,000 pence limit still remains. I do not think if divorce were permitted in the county courts that the necessary expenses would be reduced to a sum which an ordinary workman would be able to pay. Bear in mind, also, he has to provide security for his wife's costs; or if the wife is the petitioner the respondent has to provide security for her costs. What possible security can a working man who has nothing but the labour of his hands to depend upon give in the matter of costs? I do not know whether the Senior Registrar of the Divorce Court, in giving evidence a few days ago, was asked in what form security was provided, or whether in point of fact it was provided, in those cases. Does your Lordship's experience enable you to say where a man is earning 2*l.* a week, and an application is made for the security of costs, what security in point of fact is given now? If it is not given, what happens?

2326. Assume, however, a county court in Northumberland, Newcastle, say, was open to the suitors there for divorce; would not the suitor who brought his suit there with simple proceedings be able to get it through at a very much less cost than if he had to come to London?—Of course, there is no doubt about that.

2327. That is the point. There must be cost always, but that seems to be the point that is made?—Undoubtedly, I should take it the cost of coming to London would be absolutely prohibitive, but I think it has not been suggested—I hope it has not been suggested—that every county court in the Kingdom should have divorce jurisdiction, but that it should be exercised in certain centres. The parties would have to consider the cost of bringing witnesses from a place like Wooler, in Northumberland, to Newcastle, or from Kendal to Carlisle, or any other place, which would be a very serious item.

2328. Take one other point about the possibility of suing in the county courts. At present we are told by the registrar that a party has to come himself or get a legal representative. Nobody else can do it, that is, enter the suit, or appear in it, or attend the summonses if it is in London. Would not that difficulty be very much minimised if suitors could deal with the cases themselves with the assistance, for instance, of the registrar of the county court in the nearest county court to them?—Going to the county court to issue their process, do you mean?

2329. For process?—Yes, they can do that now in county court cases, and I suppose they could do it in the county court if divorce jurisdiction were conferred.

2330. As far as I follow what you have said, the mere fact that there would be some cost, perhaps considerable cost, even in the county court, would not necessarily show that it would not be an advantage to a good number to get their cases done at a less expense rather than not get it done at all in London?—The reduction of expense would make it easier for them, assuming it to be desirable it should be made easier.

2331. If that jurisdiction were conferred on the county courts, I gather from your memorandum that ought also to apply to the metropolis?—I think it is clear that if the supposed boon of cheaper divorce is to be conferred upon the poorer classes of the community, those classes in London should not be excluded from the advantages conferred upon their brethren elsewhere.

2332. The result of your view is, I think, that the conferring of jurisdiction in matrimonial cases on the county courts would be undesirable in itself, and, further, that it would be of very little use to the parties in whose supposed interests it is suggested?—That is my view.

2333. You have also considered what is the effect of conferring such jurisdiction on the county courts themselves?—Yes.

2334. The memorandum is somewhat full on that point. I take it the broad view is that they have too much work already to do?—Not the county courts taken as a whole, but the county courts in the districts in which I gather the matrimonial cases would be most

* Note.—In this connection I should like to refer to the observations of Mr. Oswald Dyker, a Scotch advocate, in an article on the present Commission which appeared in the *Juridical Review* of January 1910, on the importance of questions affecting status being dealt with only by the superior tribunals.—W. L. S.

numerous are already overworked. They cannot keep up with their work without assistance, and they certainly could not add anything to it.

2335. You notice that the county courts, at any rate the more important ones have had jurisdiction in bankruptcy conferred upon them?—Yes.

2336. Also with regard to employers liability?—Yes.

2337. So that the county court jurisdiction has been increased since 1846 to the present day?—Since 1856. In 1847 they were instituted. From 1856 onwards there has hardly been a year in which some duty has not been cast on the county court.

2338. That is to say, there is a certain amount of confidence in them?—I should not dissent from that proposition.

2339. Is their bankruptcy jurisdiction unlimited?—Yes, the same as the high court, except that in certain cases a claim made against a stranger exceeding 200*l.* cannot be brought in the county court if he dissents, in which case it must be brought in the high court.

2340. What do you say as to the capacity of the county court, apart from its duty, and as to the ability of the judges to deal with the class of case which has been suggested should go to them?—I think, perhaps, that ought to be asked of someone else rather than a member of the bench.

2341. Your real ground is the present state of the work?—My real ground of objection, apart from the broad objections on principle, is the state of the work in the courts with which I am familiar. In Kent I could have done it; I do not say I could not.

2342. Assuming the country determine to have it, it would only be a question of supplying more judges to do the work?—I trust the Commission will not fail to call attention to that fact. I do not wish them to recommend that this work should be imposed upon us without a recommendation that the position of the judges of the county courts shall be duly considered, both as regards their numbers and in another important item.

2343. I think, although it is more amplified, that is the substance of the next two pages of your notes?—Yes. I should like to say—I do not know whether your Lordship is coming to that point—I observed for the first time that Mr. Justice Bargrave Deane suggested that cases should be tried by a judge of the Divorce Division going on circuit. I think that would be the proper solution of the matter. If not, I must say I feel very strongly that the jurisdiction should not be conferred on the county courts all round. I think the matter ought to be considered in connection with the question of the jurisdiction of the county courts in other respects, with which your Lordship is familiar from the Bill of last year. I think that the true solution of the question of the local administration of justice is the establishment of courts intermediate between the county court and the high court, and that the divorce jurisdiction if conferred on local courts should be conferred on those.

2344. Does that mean special judges for that purpose?—No, for the administration of local justice generally in the shape of district courts, with jurisdiction to try all cases that might be brought in the King's Bench Division, unless removed to the King's Bench Division, and with jurisdiction to try all cases at assizes, except such as at the Central Criminal Court which would be reserved for a judge of the high court.

2345. You would establish, in fact, an intermediate tribunal between the county court and the high court to deal with more important cases?—Yes.

2346. But not cases which would necessarily be required to be brought into the high court?—Yes.

2347. There would be power to remove them if thought fit?—Yes.

2348. I think that substantially deals with all in your memorandum?—I may have omitted something, but probably someone else will ask about it.

2349. (*Mr. Brierley.*) You are not in favour of the jurisdiction being extended to county courts?—No.

2350. You are also in favour of separation orders granted by courts of summary jurisdiction being restricted?—Certainly.

2351. What do you propose? Take the case of the poor wife who is really badly treated by her husband. What do you propose she should do in the future if your recommendations were carried out?—What she has done in the past, I think.

2352. What past? Do you mean before 1895?—Yes. Not necessarily that. I think what has been said to-day with reference to the making of separation orders temporarily in the first case is a very good suggestion. The only point on which I differ is that the question of making them permanent should be dealt with by the same tribunal in the first instance, and not by the county court.

2353. You mean you approve of the method of granting them for a certain time in the first place, and then application being made to the county court?—Not to the county court, but to the court which granted the temporary order. I believe in point of fact that it would be found that in a very large number of cases the parties come together.

2354. No doubt in a great number of cases that might be so, but that would hardly dispose of all of them?—No.

2355. You say that it is not suggested that every county court should have jurisdiction in divorce. I do not understand that to be so. I understand there is a suggestion that every county court should have it. Supposing there is such a suggestion, why do you object to that and say special county courts or certain county courts in each circuit would be better for the trial of these cases?—Because so very many of the county courts are utterly unimportant.

2356. The judge is the same?—The judge is the same, but the officials are different.

2357. The officials would be less efficient for that class of work?—Yes. When I say "some county courts" only should have them, I am taking that from the report of the county court committee.

2358. That is true: chiefly on the ground, you mean, of the registrar and his clerks not being as efficient as those?—Not only so, but being as a rule in small courts solicitors to the parties. In a small county court the registrar knows most of the suitors by reason of their being his own clients. In a small county court he is always in practice.

2359. (*Judge Tindal Atkinson.*) Most of the registrars are in practice, because the Lord Chancellor only refuses to sanction the appointment if his fees do not bring in 1,000*l.* a year?—By far the majority are in practice.

2360. Are practising?—Yes.

2361. As far as the trial is concerned of these divorce cases, there would be no reason as regards the judge why they should not go to every court?—No, he would be there.

2362. As regards the mere administrative part of the work, do you suppose it would create any greater difficulty than an ordinary action which is brought into court?—I am not familiar with the practice in the Divorce Division. I do not know anything about it, and I am certain that none of the local registrars do, but I see in this most valuable county court report it is suggested that in every case before it is heard the record should be sent to London, so that the registrar there may be satisfied it is in order. I conclude, therefore, that there is some difficulty about it.

2363. That would not necessarily increase the expenses if it was sent to the registrar. It is simply a question of the postage and a certain amount of copying?—That is so.

2364. That would entirely protect the parties from anything being improperly conducted?—Yes.

2365. You agree that the county courts of 1846 and the present time are very different courts?—Very.

2366. I do not want to take you through them, but I should like other members of the Commission to refer to the County Courts Committee Report at pages 2, 3, 4, and 5, which will show the very extensive increase of the county court jurisdiction. They now

have to deal with cases of considerable importance and very large amounts?—Yes.

2367. The courts themselves, I think, are popular with people, are they not?—Yes.

2368. Why I mention that is this, according to the returns last year in the cases which were tried under the extended Jurisdiction Act there were 3,096 cases under that Act alone in that one year?—Yes.

2369. Then we find that in the year 1907 the number of actions tried on the High Court Circuit was 580, and the number of cases tried by consent beyond the jurisdiction of the county court was 573?—That I do not know.

2370. That is according to the return?—I consider that return to be misunderstood. I think 573 does not represent actions brought by consent, probably not a dozen of them. During the 27 years I have sat as judge of the county court I have only tried two actions over 100*l.* by consent, and I am convinced if those 573 cases were analysed they would almost all be found to be employers' liability cases and Admiralty cases. I think that a wrong inference was drawn by last year's Committee from the return.

2371. There are 55 county court judges; originally, I think, there were 60?—Yes.

2372. You know of no Act of Parliament which would prevent the Lord Chancellor from appointing an extra five judges if he chose?—I know of no Act of Parliament.

2373. Those five additional judges would give a great deal of assistance if divorce was given to them?—Of course they would.

2374. And be practically sufficient for the purpose?—I should think they would.

2375. As regards the number of cases, I have had the number of marriages in my Southend district taken out for the last year. There were 557 marriages over the whole of that district?—Yes.

2376. Supposing there were 2 per cent., which I should say was a liberal allowance, out of that for divorce cases, that would only give me about 12 cases in the year to try?—At Southend.

2377. Yes; and the learned President has said you can try an undefended action in a quarter of an hour. I suppose that I could easily dispose of those 12 in 12 months?—Yes. I do not like the idea of disposing of the status of marriage in a quarter of an hour.

2378. It is done?—I am sorry to hear it.

(*Chairman.*) Might I just say on that, it sounds startling, but in many of these cases the proof of the marriage, and that the parties have lived together for a short time, and on a certain date the husband has gone to America and not been heard of, takes only a very few minutes.

2379. (*Sir Lewis Dibdin.*) You have told us you object to the extension of the jurisdiction of divorce to county courts on principle?—Yes.

2380. You also think that the supposed economy would not be nearly as great as is supposed?—I think that is so. Judging from what one knows of the costs of an action in the county court I think so.

2381. You pointed out that the witnesses' expenses would be certainly considerable, particularly if the county court judge sat at certain centres under this jurisdiction?—Yes.

2382. You have referred to the fees. Is it your view also that the expense of employing a solicitor and counsel in all these cases would greatly add to the expense of the suits?—Necessarily. I see it is suggested that counsel should have exclusive audience.

2383. I was going to ask you whether you agreed with the recommendation of the committee. We have heard a good deal about the proposal that in all these cases counsel should be employed and a solicitor, and even in the undefended cases. It is said that it would be a tax on the judges to watch these mostly undefended cases without reliable help, which could not be expected from local practitioners, who would not have the necessary experience. So that it is contemplated that there should be solicitor and counsel even in the county court cases, and even in the undefended cases. Do you agree that would be necessary?—Unless the parties appeared in person. I would not give the local solicitors audience in those cases.

2384. If the report of that learned committee is well founded, that would greatly add to the expense of these cheapened divorce suits in the county courts?—My observations are based upon that.

2385. I have listened to your suggestion of the intermediate judge between the high court judge and the county court judge. Supposing that were untenable, would you be in favour of what I think you have referred to, Mr. Justice Deane's suggestion that a divorce judge, either one of the two existing now, or an extra judge if necessary, should from time to time hold local courts at which divorce cases can be disposed of?—I think that would be the preferable alternative.

2386. You think that would be better than referring these matters to county courts?—Certainly.

2387. (*Mrs. Tennant.*) In your opinion would that diminish the expense?—No, I do not suppose that would diminish the expense.

2388. In fact it must necessarily cost more under that system than under a county court system?—I do not know. I should think the cost would be about the same.

2389. Would it be possible under that system to have accessibility between Kendal and Carlisle, and Wooler and Newcastle? You instance those places as places which would cost the witnesses a good deal to journey between?—I think both Carlisle and Newcastle are Assize towns. I presume the judge would go to those places. He would only go to the Assize towns; I apprehend he would not go to more centres than those. I think the suggestion of Mr. Justice Bargrave Deane was that he should sit at places where there were local probate registries, but I am not sufficiently familiar with those registries to know where they are situated.

2390. Would not they be situated in fewer places?—I think he said about 40 over the Kingdom. That would be fewer than the number of assize towns.

2391. Would it be possible for one judge to take that number of places in a year?—It entirely depends on the number of cases which would be brought into court. I observed Sir John Macdonell in his evidence was asked whether there would be a number of these cases, and he said there would be a rush at first, and after there would not be many. If that be so I do not know that there is any great reason for the extension of the jurisdiction.

2392. That would apply equally to absence of pressure on the county court?—Yes.

2393. (*The Archbishop of York.*) You have attached some importance to what you consider to be the difficulties of county courts in detecting cases of collusion. Will you say why you think county courts would be in special difficulty in such cases?—In the high court there is an official who is known as the King's Proctor. I believe in point of fact he is also the solicitor to the Treasury. He is charged with the duty after the decree nisi has been pronounced, of making enquiries into the case before the decree is made absolute, in order to see whether there is any reason why it should not be. It would be extremely difficult for the King's Proctor to undertake that in the case of the county courts.

2394. I was going to ask whether, with your long experience of the officials in connection with county courts, they could be entrusted with that important function?—I know no one who could do it except the registrar.

2395. Do you think he would be qualified for such work with the assistance of enquiry officers?—I suppose he would. I say so for this reason. One of my registrars in Kent had been earlier in his career in the office of the Treasury solicitor, and he told me that on several occasions the Treasury solicitor had sent down to him to make enquiries in cases that were pending in the high court, and I presume what he did other registrars could do.

2396. So that you think the difficulty is rather the general difficulties of a court not exclusively devoted to that subject, rather than any difficulty about the individuals?—Yes.

2397. Have you any reason to believe from your experience or from what you have heard, that the effect of the Summary Jurisdiction Act of 1895 has been to increase the instability of marriages amongst the poorer classes?—I have no personal experience, but from the evidence I have heard I should say certainly it had.

2398. Your point is that if the extension of these very wide facilities for separation has resulted in a general loosening of marriage obligation, that would be increased very much more if to these facilities were extended facilities for cheap divorce?—Yes. I think if they had a court near at hand it would have that effect.

2399. I ought to know, but I should like to have it confirmed; what are the classes in the main with which the county court judge is concerned? Does any part of his jurisdiction bring him into any close and familiar touch with the habits and ways of the very poor?—I do not think it does very much. The majority of cases in the county courts are undefended. We talk of having 1,250,000 cases in the year; as a matter of fact, out of those a very small proportion, indeed not 50,000, come before the judges. They go before the registrar, or they are paid without any hearing at all, and the only way in which one hears of the parties is when they are brought up on judgment summonses for not paying debts.

2400. Is the greater part of the work of county courts now, as to the extensions that have been given, largely financial?—By far the greater number of cases are merely small debt cases.

2401. Still?—The bulk of the business which occupies the time of the judge is to be found in perhaps something like 40,000 out of the whole number of cases brought into the courts in the course of the year.

2402. With your long experience as a county court judge, would you say that you and your colleagues had any exceptional opportunities for being able to estimate the habits and ways and characteristics of the very poor, who presumably come before the county court?—Not nearly so much as the magistrates, nothing like so much. They do not come to us for advice in the same way.

2403. Although you have said you objected to the conferring of this additional jurisdiction on the county courts, could you indicate in some way what proceedings you thought might be taken in the county court of an initial kind which would not incur the dangers you mention. Can you suggest any means or process by which additional expenses at the outset in the proceedings could be saved?—If the cases are brought into the county court?

2404. Yes, before going to the high court?—The parties who appear for themselves can go the registrar's office and have their papers filled up for them if they are illiterate and unable to do it, and the clerks give every assistance in that way. Then the registrars and the clerks would have to learn the practice just as much as the judges.

2405. You see no objection to assisting litigants in these preliminary stages at the county court. It would save expense?—It ought not to be done at the expense of the officials.

2406. You might trust a generous country. You expressed yourself in favour of restricting the separations, at all events. I did not gather you suggested that the Act of 1895 should be repealed?—Not repealed, no; but I think the suggestions that have been made for a tentative order to be confirmed or to come to an end if the parties come together are very valuable ones.

2407. Would you be in favour of removing jurisdiction in cases under the Act of 1895 from the magistrates to the county court?—I do not think so, because the magistrates sit far more often than county courts in most cases. In large centres the county court, no doubt, is sitting every day, but the petty sessional bench is sitting all over the country generally once a week, or at any rate once a fortnight, and the judge visits the small courts at intervals of one or two months only.

2408. Do you think that the present system of adjudicating on these separation summonses is better than conferring that system on the county courts?—In the case of stipendiary magistrates I should think it is certainly better. In the case of the unpaid, I do not know; I should not like to say. Possibly they do not deal with these cases quite with sufficient gravity. I do not know that that is so.

2409. Would your view be, if the stipendiary magistrates could be greatly multiplied, that they would be the ideal body to deal with such cases?—I think they are the best body, I should say.

2410. (*Mr. Rufus Isaacs.*) There would be no difficulty, I suppose, once it had been determined that jurisdiction should be given to the county court judges, in these cases being properly tried by the county court judges—they are quite able to try them?—Again I would rather you ask that of somebody who appears before the courts.

2411. I am not asking it of yourself, but speaking of county court judges as a rule; you must have some knowledge of them, have you not?—I have no knowledge of the practice in divorce, but of course one would learn it, and I suppose probably we should be able to try them as well as we try the other cases brought before us.

2412. They try cases which are very important to the parties as it is now?—Yes.

2413. Without appeal on questions of fact?—Yes.

2414. Is there unlimited jurisdiction in anything in the county court?—It has unlimited jurisdiction in bankruptcy, subject, I think, to a question of consent in cases where there is a third party, a stranger to the bankruptcy, and the claim involves over 200*l.*

2415. (*Judge Tindal Atkinson.*) May I suggest another is under the Agricultural Holdings Act; it is unlimited there?—We have very little to do with that now.

2416. (*Mr. Rufus Isaacs.*) Have you considered how it would be possible to limit the jurisdiction of the county courts, supposing it was deemed desirable to confer the jurisdiction on them? Has that entered into your consideration?—Not further than it is suggested in this County Courts Committee Report.

2417. There is a suggestion to some extent?—I have not considered that.

2418. Of course, at the county court, in the ordinary course, if the judge was dealing with this matter, he would have to deal with maintenance?—Yes.

2419. And the custody of children?—Exactly.

2420. And I suppose if there were nothing to oust his jurisdiction as regards the amount, he would have to deal with settlements?—That would be practically non-existent in small cases.

2421. If there is nothing to limit the jurisdiction in amount?—If there is nothing to limit the jurisdiction in amount, of course he would.

2422. He would have to deal with all those matters?—Yes, all those matters; and so much discretionary power is exercised by the judges of the Divorce Court, I think it is extremely difficult to confer it on a large body such as the county courts.

2423. You dealt with the suggestion of Mr. Justice Bargrave Deane, or one of the judges of the Divorce Division going on circuit. You seem rather to adopt that view, I suppose, considering that there are only two judges in that division at the present moment?—I presume Mr. Justice Bargrave Deane was not speaking without book, that he contemplated that the division would be strengthened sufficiently to enable that to be done. It had not occurred to me before I saw his evidence.

2424. He would be an itinerant judge whose business it would be to travel round?—Supposing there were three judges of the division, they would undertake the duty of going on circuit, I imagine, in rotation; I do not know.

(*Sir Lewis Dibdin.*) Yes, that was so.

(*Mr. Rufus Isaacs.*) There should be another judge.

(*Sir Lewis Dibdin.*) If necessary, but sometimes one and sometimes another.

2425. (*Mr. Spender.*) Broadly speaking, your view is that divorce ought not to be made easier?—Yes, broadly speaking.

2426. And anything which makes it less expensive makes it easier?—Yes.

2427. You do not mind if this works out in practice by giving divorce to the rich and not to the poor?—No, I do not think I do.

2428. You do not think the denial of divorce to the poor would lead to irregular connections, and possibly entanglements which might lead marriage itself into contempt?—I do not think it has been found so since the Divorce Act has been in operation.

2429. Would it not be true to say in a great many of these cases in which separation orders are granted that it does result in irregular connections?—I gather that it is so since that unfortunate departure.

2430. Might that not be cured by making divorce easier?—I would rather cure it by restricting the separation.

2431. Do you think that would cure it?—I think so.

2432. (*Chairman.*) With reference to the King's Proctor, at present, if a case comes from the country, the King's Proctor in London enters an appearance, but his inquiries have to be made in the country?—Yes.

2433. I understood you to say they were made by the registrar?—I have cited one instance in which I know that to be so.

2434. That position would be no different if the trial took place in the country, would it?—No, if the registrar were charged with the duties of the King's Proctor.

2435. If the same system prevailed as at present, it would only mean the King's Proctor might have more cases, but he would follow the same procedure as at present?—I do not know to what extent the isolated instance I am aware of indicates a general practice, or how the King's Proctor as a rule makes his enquiries.

2436. He must make his enquiries in the country where the case has come from?—He must.

2437. That would be so whether you tried it in the country or in London?—Certainly.

2438. As to the itinerant intermediate judge you spoke of, would you suggest he should take all divorce cases that occurred in the country, or only those that were applicable to persons with means?—I think he should take all that arise in the district.

2439. Whether rich or poor?—Yes.

2440. Is there any necessity for that? Those who can afford it can easily come to London?—There is no necessity for that, but I think there is necessity on broader grounds, for the establishment of district courts.

2441. Supposing you did establish district courts, would it not be rather better that still the larger cases should come to London?—Certainly.

2442. If you sent the judge, like Mr. Justice Deane suggested, round the country, he would be sent round merely to try the smaller cases?—Yes, but the idea seems to be that there should be facilities given for bringing the cases that are not at present brought. Therefore I apprehend the number of cases would increase.

2443. It is suggested it is waste of power to send a high court judge down to try the smaller cases. That is contrary to the general principle?—That is the suggestion of one who is already exercising that jurisdiction, who thinks that questions of status should be dealt with by a judge of the high court—with that I agree; but the suggestion of a judge of the high court going on circuit was not my suggestion originally. My suggestion would be to have district courts.

2444. (*The Archbishop of York.*) Did not the judge distinguish between an itinerant judge and an intermediate judge? The point was, you made a suggestion of your own that there might be intermediate judges between the county courts and the high court?—I think so.

2445. Who might, if necessary, be entrusted with this jurisdiction?—

(*Chairman.*) I was rather dealing with the case of a high court judge.

Mr. CHARLES JAMES RICHARD TIJOU called and examined.

2446. (*Chairman.*) Are you high bailiff for the Bow County Court?—Yes.

2447. Are you representing the High Bailiffs Association?—Yes.

2448. Have you conferred with the members of that association with a view of giving your evidence?—I have.

2449. First of all, with regard to jurisdiction in cases of divorce in the country. Have you come to any conclusion whether that should be conferred in any particular form?—Yes, we are unanimously of opinion that it should be conferred upon all county courts, metropolitan as well as country courts.

2450. Will you give your reasons for arriving at that conclusion?—First of all, to lessen the expense of the proceedings, and secondly, to enable the cases to be tried nearer the homes of the parties, which would consequently save considerable expense in the shape of travelling and other expenses.

2451. Enable them to get to them themselves?—To a great extent.

2452. Has the association any opinion as to the limitation of county court jurisdiction?—No, they have not. They think that it should be absolutely unlimited.

2453. With a right of removal?—Yes, and absolute right to either party to remove the proceedings to the High Court, due provision being made for the expenses of poor persons.

2454. Suppose a very poor person starts in the county court, and the respondent has the right of removal, is not that a practical bar to going on?—If one of the parties had the means to pay the cost of removal, and an order could not be made for one of the other parties to do so, then it could not be removed unless in a case equivalent to where they are suing *in formâ pauperis.*

2455. I should suggest that is a discretionary removal and not a right of removal. Perhaps you will accept that?—Yes.

2456. The next point is only as to the form of dealing with the summons. I do not think I need trouble you about that. With regard to the county courts having jurisdiction in separation orders, will you tell me what opinion has been formed upon that, and what are the grounds of that opinion?—We think that there should be a concurrent jurisdiction in the county courts, concurrently with the police court; and certainly in cases where assaults have been committed. Then, we think that the jurisdiction should remain with the police court, but where there have been no assaults whatever then we think that they should go to the county court for an order.

2457. Has your association's attention been directed to any question of limiting the magistrates' power to make permanent orders as against orders for a time?—It has not.

2458. Have you formed any opinion yourself upon that; if you have not, please say so?—I would rather not give an opinion upon that. I have not considered that.

2459. Your next point is about lunacy. Will you tell us the views which have been expressed about that?—A majority of the members are strongly in favour of the opinion that permanent lunacy should be a basis for granting a divorce.

2460. Would you tell us what is the number of your association that take this into consideration?—I think about 14 or 15 attended a meeting from various parts of the country. One came from Bristol, one from Pontypridd, and one or two from the north of England.

2461. Not only London?—In addition to a few London members. We had eight or nine at least of the provincial high bailiffs present.

2462. Was their view that this jurisdiction, if conferred on county courts, should be limited to any special county courts, or that it should be exercised by all?—We think all county courts should have the jurisdiction.

2463. Have you taken into consideration whether that should be exercised by all the judges or by judges delegated for the purpose?—By the regular judges of the court.

2464. Do you anticipate any difficulty about that with your experience?—No, because there is power for the Lord Chancellor to appoint still further judges if the work required it, as has been done for the ordinary work of the courts. In many courts we have an additional judge. In my own court, we have a portion of the services of an additional judge to cope with the ordinary work of the court now.

2465. What view have you formed as to the publication of reports?—We think that no publication of them should be allowed, but that a statement of the proceedings and the result, with the names and permanent addresses of all the parties, should be published.

2466. As to the equality between husband and wife, which is the last point you mention, have you formed any view upon that?—There we think very strongly indeed that the divorce law should be amended so as to apply equally to one as to the other. That was an absolutely unanimous opinion.

2467. I want to pass on to another point in the next paragraph in your proof which you have supplemented. You are also an honorary secretary to the National Society for the Prevention of Cruelty to Children?—I am for the West Ham and West Essex Branch.

2468. And you have been over 16 years?—Yes.

2469. You were also honorary secretary to the West Ham Union Boarding-Out Committee for Woodford?—I was.

2470. And honorary secretary of the Woodford Charitable Relief Fund?—I was for several years.

2471. You are also intimately conversant with the Girls' Aid Society in the West Ham Union district which carries on rescue work in that union and district?—Yes.

2472. Your wife, being secretary, having managed that?—I have had a great deal to do with that for many years.

2473. You are an honorary diocesan lay reader in St. Alban's diocese, and a parochial lay reader in London diocese?—Yes.

2474. You have had a lot of experience in charitable work?—I have.

2475. Has your work in connection with the Society for the Prevention of Cruelty to Children brought you into contact with cases of husband and wife living apart?—Yes, very many.

2476. Will you tell us what you wish to say about that, because your note is brief?—A great majority of cases of cruelty and neglect refer to the children of men and women who are not husband and wife. It is a common occurrence, a very common occurrence, when a man perhaps turns his wife out of the house, for them to pick up with somebody else directly and to go and establish another home. One case I had only last week before me was where there were three families in the house, the man's family, the woman's family, and as they had been living together for many years, there was a third family there.

2477. In each of these cases have you investigated whether the children are legitimate or illegitimate?—Yes, that is specifically inquired about, and particularly noted.

2478. What do you say as to the proportion of those that are illegitimate who are affected or concerned in your inquiry and those that are legitimate?—I should think five-sixths of the children referred to are illegitimate children. They are not all cruelty cases, but cases of neglect, where the children are in an unhealthy and dirty state, and neglected.

2479. What bearing has this on the question of separation orders?—I think if these persons could be divorced that it would legitimise an enormous number of these children, the result of these separated married people living together.

2480. Do you find in fact that in these cases they have been separated by orders?—In a very large number of cases they have not, simply mutually separated, and in many cases almost without any serious quarrel. They just simply throw each other over and pick up somebody else.

2481. In other cases are there orders?—In very few cases in one police court. Taking a district with the number of inhabitants about 80,000, there are only 18 or 20 orders made last year. That is in the West Ham Union district, comprising the suburbs of Wanstead, Woodford, and Leytonstone, and of those not in one case has any application been made to commit the husband for non-payment.

2482. What remedy do you suggest for the state of things you describe of these people, either under an order in some cases, or the majority without any order, living in this irregular fashion?—I do not know exactly what would be the best thing to suggest. We find this as regards obtaining the separation orders; in some places, there are an immense number more granted than in others. In West Ham, which is the court I am speaking of, the justices and the clerk take very great pains to get the people, who are mostly young people, to live together again. I was told by a clerk that, if possible, they try and convict the man of an assault, if there has been an assault, and bind him over, so as to have some control over him if the proceedings come before them again. But they find in the great majority of cases, that the advice of the justices or the clerk, to these young people, brings about the result that they do not come before the bench again. The probability is that most of them make it up and live together fairly comfortably.

2483. Do you think that if these parties whom you describe as living together improperly, either by consent, or in certain cases by order, had more opportunity of obtaining means of legitimising their union by getting a divorce beforehand, that there would be an improvement in that state of things?—I am afraid a very great number would not take any trouble of any sort. They live together in numbers of instances that come before me, and there is no marriage whatever, either religious or civil.

2484. To begin with?—Yes, there are numbers of cases like that in families in the dock neighbourhood of Canning Town and Plaistow Marsh, where they have no idea whatever of the position of home.

2485. You are speaking of cases where they have never been married at all?—Or where they have separated and picked up with other people, but I think that the great majority of them would not take any steps to legitimise. Some might, but my idea is that anything which could be done to legitimise some of this large number of children would be of advantage.

2486. (*Mr. Rufus Isaacs.*) According to what you have just been telling us, if I correctly understand you, there does not seem to be any value set upon marriage at all among certain people in a district?—That is so.

2487. Do you think that is very prevalent?—I think it is very much so in the poorest part of East London in the dock neighbourhood, where there is a very large foreign element.

2488. Is any attempt made to conceal the fact that they are not married?—No, they admit it in my investigations in connection with the society, and they admit it in court frequently.

2489. It does not reflect upon them amongst their neighbours?—In those particular neighbourhoods it does not.

2490. As a result of that, do you find that the children of these irregular connections are on the whole worse treated than those of married couples?—Most certainly they are.

2491. Do you think that might be caused in any way by the greater poverty of people who live in this irregular way?—No, because many of the men are earning good wages, far better wages than the casual dock labourer, and that class of people.

2492. They are men amongst the better class?—It is not confined to the absolutely poorest class, the dock labourer.

2493. It is more prevalent amongst the foreign element?—Yes, it is, except amongst the Jews.

2494. That does not apply to them. You do not find it there at all?—Not very much; very seldom indeed.

2495. I wanted to ascertain whether the experience that you have amongst these people shows you that it is more prevalent amongst the poorer people you have spoken of, and the foreigners, than it is amongst English people?—I would not say that it is more amongst foreigners. It is quite as bad amongst the English, as with the foreign element.

2496. When you speak about men or women having been married, and then having left each other and started another home, have you had any opportunity of ascertaining amongst some of the cases what the reason is for the home having been broken up?—Very often it is from incompatibility of temper.

2497. And sometimes, I suppose, drink?—Yes, frequently. There is no doubt about that.

2498. Either on one side or the other?—Yes. Of course, when it is on the part of the woman it is an immense deal worse than with the man.

2499. In cases of which you have spoken of neglect of children, do you find that happens in cases where you can trace a good deal of drunkenness; or has not that affected it?—Yes, in many cases, we have found that there is habitually heavy drinking, and in some cases the children have been found with the women perhaps away from home till midnight. They are left the whole of the day with the women out drinking. There was one case I had of a very respectable man employed at one of the stores, a man earning 2*l.* 10*s.* a week, and he had to be prosecuted for neglect of the children, because his wife, to whom he gave nearly all his money, squandered his money, and had pawned his furniture, and the children were starving and dirty as well, neglected in every way.

2500. You say he was prosecuted?—The wife was prosecuted, and he had to be prosecuted, but he was not convicted.

2501. I hope not?—He showed he had done everything he possibly could, and my inspector there advised him to make some arrangement by taking the children away, so that they could be treated better. That is frequently done by the inspector.

2502. With regard to your High Bailiffs Association, how many high bailiffs are there in England?—Now, there would be about 70, I suppose. At one time there were over 100.

2503. In England and Wales?—Yes, England and Wales. In the smaller courts now the registrars are high bailiffs, but in all the large courts a high bailiff is appointed.

2504. When you say to us to-day that you speak on behalf of your association, does that represent all the high bailiffs or only some of them?—It represents those high bailiffs who are members of our association.

2505. How many are there?—We have about 35 or 36 members.

2506. About one half?—Yes. In the smaller courts they are very small courts, and they do not trouble to join the association.

2507. Through the association or through its officers you come in contact with the poor people?—A very great deal. I have 16 officers who are out of doors in the district all day long, and I am very often able to use their experience to assist me in charitable work. I take part in administering 1,500*l.* every month, and I am frequently able to get information from my officers, or from the cruelty to children officers, in order to assist me.

2508. (*Chairman.*) Would that information enable you to be of service to the King's Proctor if it were utilised?—A very great deal. Myself, personally, living in the district, I know the great majority of people; I know the shady characters pretty well, and I am well known over the whole of the district personally.

2509. Does he use your services?—I have never heard of him except what I have read of him. The officers themselves would have naturally very great capabilities of investigating anyone's character.

2510. (*Mr Rufus Isaacs.*) I suppose also they would have some opportunity of ascertaining whether any attempts at reconciliation would be of any avail?—Yes, I should think they could obtain information, and they are very suitable men for doing that.

2511. That is to say, the officers under you?—Yes, the process servers. They are over the ground in their own particular district every day, and they know practically every house in the district.

2512. Do you think that clothing the judge with very wide discretionary powers of attempting to reconcile people who are separated would be any use amongst the poorer people?—I should think it would have a very great advantage. People would be influenced as they are influenced by the justices or the justices' clerk. I think they would be equally so influenced by the county court judge.

2513. Speaking from your experience, what do you say is the effect of the granting of the separation orders under the Act of 1895. Have you formed any opinion?—No, excepting it seems to me to be practically nil from the very few cases which are enforced. Making an order may have a deterrent effect on the conduct of the man, perhaps, but I cannot find out that any public result occurs in any connection with the court. In the bulk of cases people make it up.

2514. In cases where separation orders are enforced, do you mean enforced or obtained? I am not asking to criticise what you say, but to understand what you mean?—I mean enforced. If 20 orders are made during the year, there would not be one case where the wife came to the court to enforce the maintenance order.

2515. I asked a magistrate this morning about that, and there seems to be some ground for saying that when the maintenance order has been obtained it is not complied with in the majority of cases? Is that right?—In many cases it is so. It is so easy for a man to abscond and to go away into a different neighbourhood. The wife has to maintain herself, and does not go near the court again, so that the court officials do not hear anything of it.

2516. We were told this morning in the court in which the magistrate was sitting that in most cases they are able to trace, and do trace, the person against whom the order has been made. Have you found in your experience amongst the women you have met who have obtained separation orders, that they have been able to enforce the maintenance order?—My experience would be the other way. In cases where we have a good class of mechanics, such as in the Great Eastern Railway Company's works, where some thousands are employed, those men would not run away; it would not pay them to go, because they could not get work. But take the case of an ordinary casual labourer, if an order is made against him it is just as likely as not he will go away to another part of the country.

2517. I want to follow this out about the orders. Has your experience shown you that in the end when a woman has obtained an order of this kind, she generally forms some irregular connection and starts a new home?—In a very large number of cases it is so, but not in all cases. Marriages seem to me to be very early in that neighbourhood, more so than in most neighbourhoods. You have young boys and girls of 18 or 19 marrying, and they are the people who come to the court. The wife comes to the court with a complaint that her husband has given her a black eye and knocked her about, on some comparatively trivial matter, and then with a little talking to, a kind speaking to by the justices, they are generally able to smooth it over, and they do not appear again.

2518. That is a case in which no order is made?—There would be no order.

2519. I am asking you about cases in which an order is made. I am asking about this class of case which must have come within your experience, a separation order made with a maintenance order, against the husband, of, say, 10*s*, a week. What I want to know is in such cases as those have you found that the wife frequently forms another irregular connection because she has not been able to marry again and sets up another home?—It is so; they do it frequently.

2520. With very often the natural consequence of illegitimate children?—Yes.

2521. (*The Archbishop of York.*) I would just like to ask a few questions about the class with whom I am pretty familiar, about whom you have been speaking to us. I think you would like the Commission to understand that you are speaking, perhaps, not of the very poorest, but certainly not of the ordinary honest hard working poor?—No, mostly those in the very worst parts of the dock neighbourhood.

2522. Casual labourers or other labourers who, even if well paid, give way to drink or thriftlessness?—Yes.

2523. Your remarks do not apply to the great bulk of the wage-earning population?—No, because I feel that amongst working-class people as a rule there is a far greater sense of morality than there is in a higher class.

2524. You say that the class just above what you have been speaking of is distinguished by a singularly high conception of the marriage tie?—Yes.

2525. With regard to this particular class of whom you are speaking, would you say that a large number of them have never been married at all?—Yes, and would not think anything about marrying.

2526. And have no particular intention of marrying?—No.

2527. Only a very small proportion of these of whom you have been speaking were ever separated by order?—Very few of them.

2528. So that of the five-sixths of the illegitimate children with whom you found this distressing cruelty, only an infinitesimal proportion would belong to those who had been separated by separation orders?—More than that. You see, with these separated people, separated by mutual consent, so many of them pick up ——

2529. I am not speaking of those separated by mutual consent, but those who are separated by order of the magistrate?—I do not find so many cases where they have been legally separated.

2530. That is what I want to get clear. When you speak of separation, you mean separation often due to a tiff?—Yes, the bulk of these cases are by mutual separation.

2531. Would it not be true of a large number, that even if they got divorces and re-married, they would probably be in difficulties with their re-married spouses?—Yes, they would not have any more respect for them.

2532. Then, conferring the power of re-marriage on the class you speak of does not come to much?—No, not much. It is only in a few individual cases where it would result in the children being legitimate.

2533. With regard to the children being legitimised, I presume that we may, unfortunately, say in that class it does not confer any great disability on them because nobody knows?—No, and I am afraid, at least I know that the records of registration show that they are legitimate. It is a very common thing amongst the lower classes, where a man and woman are living together like that, for the mother to register the birth, and as a matter of course she gives the information of the man as her husband. It is only indirectly where one knows that the children are illegitimate.

2534. In regard to the effect of the separation orders, orders of the magistrate, I think you said in the great majority, after the summons has been taken out, the parties come together again?—Yes, in a very large number.

2535. You would not imply that in the great majority of cases where the court heard nothing more of the summons that it meant that the woman had not been able to find the husband to get maintenance, but rather that after reflection they had come together and were going on all right?—Yes, in a very large number of cases it would be so.

2536. I think the Chairman asked you whether you had any remedy for this unfortunate state of things about the marriage tie in that class. Would not you say the only remedy was to deepen in their minds a sense of the obligations of the marriage tie?—When they come before the justices or the judge then an influence might be brought to bear. It would strengthen outside influences which are frequently brought to bear with them and which have no effect, where perhaps the legal influence would, as when they come before the court that has a little more effect upon some of them.

2537. What is wanting is any sense of the obligation of marriage?—Yes.

2538. What do you say would be the result of familiarising these people with the possibility of obtaining an easy divorce? It might even increase this loose sense of obligation?—I do not think it would increase it. I am not in favour of divorce, but I feel this very strongly, considering that the upper classes can get a divorce I feel that there should an opportunity for the lower classes to have it.

2539. There is one point I should like to have a little more information about. You were speaking of your under officers and their capacity for obtaining information about the lives and habits and ways of the people. You would say that the power of the bailiff to get information was great, but you would not have us imply that his moral influence was very great?—No, not altogether.

2540. I put that because you seemed to imply that the bailiffs might be useful persons to try to bring together parties who had had disagreements?—I beg your pardon, I did not mean to infer that, but simply that they could give information, that the bailiffs would be able to give information to any official similar to the King's Proctor. The assistant bailiffs would not be suitable men as a rule in that way. My cruelty to children inspector is a man who has been a pensioned police officer, and does an immense amount of good by quietly talking to the people and bringing them together.

2541. That class of man would be admirable, but I wanted to make it clear that you did not suggest the presence of the bailiff in the house would have any influence with the parties?—The county court bailiff usually is a respectable man, and in my office nearly all my officers are pensioned police sergeants or men of middle age who would have considerable influence if they were perhaps gentle enough to exercise it.

2542. For the purpose of getting information you would say that they were of great importance?—They should be very useful for that purpose.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTH DAY.

Wednesday, 2nd March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.

His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. CHARLES HERBERT PICKSTONE called and examined.

2543. (*Chairman.*) Are you a county court registrar?—I am.

2544. Where?—Bury, Lancashire.

2545. Has that a large population?—An area of 170,000.

2546. You were admitted a solicitor in 1886, and you had a large and considerable practice on your own account before you were registrar?—I had.

2547. During the last 12 years have you been registrar at Bury?—That is so.

2548. Who is the judge there?—Judge Bradbury.

2549. Has the question of economy in divorce suits been a matter to which you have given your attention?—Ever since the beginning of my practice.

2550. I think you read a paper on the subject at Liverpool some 15 years ago?—That is so, and at Newcastle 1909.

2551. Have you considered the question of conferring jurisdiction on local courts, subject to limitation?—I have.

2552. You classify your views under three heads, the injustice of the present system, moral evils resulting, and the remedy?—Those appeared to be appropriate heads.

2553. Will you deal with them on the basis of those three heads? As to one, what have you to say with regard to the present system?—First of all I say that this is no question of increasing the facilities for divorce, but rather of bringing what purports to be an existing remedy within the reach of the poorer classes who have been unable to utilise the remedy. There is only one law, of course, but it has been inaccessible to the poorer classes.

2554. What are your main objections to the present system?—In the first instance, owing to divorce administration in England only being had in London, it is quite inaccessible to the great bulk of the population, and, secondly, owing to that being the fact, the cost is quite prohibitive, that is to the poorer classes, and in the third place, the delay, and particularly the uncertainty as to when the hearing will take place is a serious drawback, even if they had the means and knew it could be tried on a definite day.

2555. Perhaps you are aware, as regards delay, the undefended cases are all taken on definite dates fixed in London?—I do understand that that is the case, but it is usually within my experience it involves more than one day in London.

2556. With the defended cases it would not be quite the same; that might involve detention in London and uncertainty of days?—Unquestionably it would in defended cases, but in undefended cases it means loss of time travelling from the North, remaining in London, and going back again.

2557. Do you find, as a matter of experience, that, apart from the question of cost, the difficulty of getting away affects the poorer people?—I do, because, particularly amongst the working classes in the industrial centres, Lancashire and Yorkshire, they cannot get off at a moment's notice. They have to provide substitutes in a great number of cases, and they do not know how long those substitutes will have to be provided for, and it means more than the loss of the time thus involved; it may mean the loss of at least a week in wages, and possibly a situation.

2558. I see with regard to cost, which you think is prohibitive, you have stated you give illustrations from actual experience, of undefended cases and cases *in formâ pauperis*. What have you to say on that point?—My experience of those two classes of cases is this, that a fair average—I am speaking from actual examples I have experience of—for undefended cases of actual out-of-pocket expenses will be from 30*l.* to 35*l.*, undefended cases from Lancashire.

2559. Might I ask, before you proceed, how as registrar of the county court you have acquired that experience?—I am a practising solicitor as well as being registrar. I am one of those who are not prohibited from practice.

2560. You are speaking from practical experience?—From experience, prior to being registrar and since being registrar.

2561. Have you looked through bills for the purpose?—Yes, I have. I have actual figures here—an undefended case in which the actual out-of-pockets are 31*l.* 17*s.* 2*d.*

2562. Would you tell us how many cases you have taken on which you have based that figure?—Three.

2563. Let us get this accurate. Are those three typical cases, or presenting any special features?—One of the main sources of expense is this: you have to do this work through a London agent, and that includes ——

2564. It is so easy to pick out a case—I do not know you have done it—and say that is expensive, and another might be cheaper. We want to get at whether that represents, from your experience, a typical case or is it a selected case?—I should say quite an ordinary case.

2565. You were going to add something?—Yes, this; a considerable portion of the expense of these undefended and even the *in formâ pauperis* cases, arises from the fact that you must do them through your London agent.

2566. The solicitor?—The country solicitor must do the work through his London agent. My London agents made it clear to me nearly 20 years ago that they would expect to be paid on exactly the same

principle as in an ordinary case. The result of that is that a large proportion of the expenditure goes in discharging the solicitor's liability to his London agents.

2567. Does that arise from the fact that the party himself or his solicitor must appear in the London registry for the purpose of conducting the business?—Precisely.

2568. What is the remedy you suggest for that?—The only remedy I can see is to localise the administration.

2569. Would that enable the petitioner himself to go into the registrar's office in the county court, for instance, and put his papers through with such advice as he would get there?—It would enable him to do that, but it would be found in all probability that it would be done then by a local solicitor.

2570. And the local solicitor would do it himself and not employ a London agent?—That is so. You want to eliminate all the external expenditure if you can.

2571. You mention out-of-pocket expenses?—Yes.

2572. Largely consisting of London agents. Is there something beyond out-of-pocket expenses you have to consider?—Yes There are the travelling expenses and the hotel expenses, and also provision has to be made for the work of the working-man or working-woman being attended to.

2573. Do your out-of-pocket expenses not include travelling expenses?—The figures I have given include travelling expenses.

2574. Is there anything beyond out-of-pocket expenses besides what you have given?—I think not.

2575. Does that include remuneration to the country solicitor?—No, it is exclusive altogether.

2576. Tell us what out-of-pocket expenses means?—It means what you pay for counsel's opinion, in the first instance, and probably some inquiries, although those figures I have given you do not include anything for inquiries.

2577. Would you mind giving me your attention for one moment? I want to get what class of expense is included in those out-of-pocket expenses.

(*Sir George White.*) This not an *in formâ pauperis* case, I understand?

2578. (*Chairman.*) No, I understand undefended cases of an ordinary kind. *In formâ pauperis* cases I will ask separately about. We want to get at what class of expenses 31*l.* covers, and, secondly, what class of expenses is left out of it?—What I intended to cover is what you actually have to pay out of your pocket. Commencing, it is usually one guinea for counsel's opinion. There are no court fees, of course, but there are the subsequent expenses.

2579. We are not on the *formâ pauperis* cases?—I beg your pardon: you are still dealing with undefended cases.

2580. I understood you to say in undefended cases of an ordinary kind the out-of-pocket expenses would come to over 31*l.*?—That is so.

2581. First of all, what class of expense does that cover: does it include the court fees?—It includes the court fees, and it includes the expenses of the witnesses in the cases I have dealt with, and the keeping of the witnesses in London for, at any rate, a day, and the London agent's charges and counsels' fees.

2582. Does that include anything for the country solicitor?—Nothing at all.

2583. Does it omit anything else which occurs to you?—No, I do not know that it does—not in those cases of which I have had experience.

2584. (*Sir Lewis Dibdin.*) Are counsel's fees included?—Yes.

2585. (*Chairman.*) With regard to the *in formâ pauperis* cases, have you any separate figures for those?—Yes. The *in formâ pauperis* case is pretty much in the same position, except for the absence of court fees.

2586. What is the amount of those?—I do not know that I could answer that question: it is not very much. I do not think they save much, probably somewhere about a 5*l.* note.

2587. My experience is generally about 6*l.*?—I think that is about correct.

2588. You have dealt with the point of delay. What would be your view—as a county court registrar you may have gone into this—of the comparative cost in the county court, assuming a simple procedure were adopted there?—I should say the comparative cost would be greatly less. The difference would be very considerable, because assuming that the jurisdiction were conferred on the county court, you would eliminate the greater portion of the out-of-pocket expenses, and in an undefended case you would considerably lessen the charges that the solicitor would have to make.

2589. Can you tell us at all what is the total in the figures which you have given for the London agent's charges?—Yes. Here is a case. First of all, may I take an *in formâ pauperis* case?

2590. The agent's charge is the same?—Pretty much the same. The actual London agent's charges are 16*l.* 2*s.* 8*d.*

2591. Have you the travelling expenses of that case?—The travelling expenses are in addition.

2592. How much?—In the bill I am now looking at they were allowed on taxation. The total bill as allowed on taxation as against the respondent was 11*l.* 1*s.* 4*d.*

2593. For witnesses?—Yes, for witnesses and counsel's fees and everything.

2594. How much were the witnesses alone?—They only allowed third-class railway fare—the exact sum paid. The taxing officer allowed the exact sum paid for hotel charges for the night.

2595. What is the total bill in the *in formâ pauperis* case?—27*l.* 4*s.* is the whole bill, and that does not allow for anything for the work the country solicitor did. In that case the solicitor only received 10*l.* from the woman to cover everything. He lost the remainder. I was the solicitor. More than one case of that kind could be mentioned.

2596. Can you tell us whether you have formed any opinion, if a similar class of work was done to that, for instance, involved by a suit in the country at a near court, what the cost would come to?—I am afraid I do not follow you.

2597. If that particular case you are on at the moment is an *in formâ pauperis* case in which there is 27*l.* for out-of-pocket expenses and 10*l.* for the solicitor, a case done in London *in formâ pauperis*, are you able, as a county court registrar, to tell us by estimate, at all, if that same thing had been dealt with in the country, in the county court, what you might anticipate it could be done for there?—I should say it would be done for less than 10*l.* if there were no court fees.

2598. The solicitor would want something, too?—10*l.* would include something for the solicitor.

2599. (*Sir Lewis Dibdin.*) Assume counsel or not?—I am assuming no counsel; the solicitor alone. I think that is an essential.

2600. (*Chairman.*) What was allowed for counsel's fee in that case?—Only a guinea with the brief. It was Mr. Pritchard.

2601. That gives us some notion of what you think about the matter, that there would be a very large proportion of reduction by local courts?—I should say a reduction of nearly two thirds.

2602. Your proof goes on to say against these points of inaccessibility, cost, and delay, that there are certain opposite arguments. You mention two: firstly, no real ground for divorce amongst the poorer classes; secondly, if divorce were cheapened the courts would be inundated. Will you give us your points based on any actual experience you have as to each of those two arguments?—In the first instance I think there is a real demand arising from necessity. The experiences one has in practice are that for lack of facilities the parties will actually go on living together after they know that one or the other has been guilty of adultery, and cases are frequent in which they seek advice as to the cost of getting free, and they find it is prohibitive. There is undoubtedly a demand for divorce, but the demand is not so publicly known, because it is recognised that it cannot be met.

2603. Then you pass on to some alternative forms of separation, voluntarily, or by agreement. Will you amplify what you have to say about that?—I say that

the drawbacks arising out of the lack of facilities are, first of all, that they come to look upon adultery as too light a thing altogether; they treat it too lightly, and then in other cases they put up with it, as I have observed, or the one will leave the other, either voluntarily, as often happens, or sometimes by agreement, which they will make in writing; or, again, the wife, if it is the wife, will apply to the justices under the Act of 1895, and it has been my experience that if the wife can give evidence of adultery the justices will require very little evidence of cruelty indeed to grant a separation.

2604. Do you mean they admit evidence of adultery in those cases?—Undoubtedly. I have gone into statistics in my own office on that question. I was going to deal with that when we came to separation.

2605. I should like to have that, because, although it may have an effect on the relations between husband and wife, strictly speaking it is relevant to the question whether there is cruelty or not?—Would you like those particulars now?

2606. Yes?—I have looked up the papers for the last 10 years in my office, and I find out of 203 cases under this Act I have myself taken, in 44 there have been direct charges of adultery made either by the wife as a complaint or by the husband as a defence, and those charges have always been investigated by the justices.

2607. That would be right enough for the defence, but why should they be investigated for the charge? First of all, how many of those 44 were where the wife, in addition to her ground under the Act, was also saying it was adultery?—I have not distinguished between allegations by the wife and the allegations by the husband, but I think I should be fair in stating the cases in which the wife has charged adultery as assisting her case before the magistrates would exceed those in which the husband has alleged it as a defence. It is quite a frequent thing.

2608. The magistrates have admitted that evidence to throw light on the case of cruelty?—Unquestionably, and taken very much less evidence of cruelty when adultery has been present.

2609. Would that be a case in which it would be desirable they should be allowed, or whatever tribunal it was fixed upon, should be allowed to take a case of divorce?—I do not quite follow.

2610. You say those cases have two causes in them, and one is treated more summarily than the other. Is it your view that leads to the conclusion that a court that could give a divorce would be applied to in such cases?—Divorce would certainly be applied for in those cases.

2611. You make a point about the children and a reproach to the law. Will you indicate what you mean by that?—I say it is very bad for the children that their parents should go on living together. I know of instances where there is actually an illegitimate child in the house, and the influence on the children of husbands and wives who live the miserable life that persons under those circumstances one knows from experience do live, is bad, because children are so largely influenced by the moral character, and by what they see going on between their parents. I think they ought not to be compelled to live together, that one or the other, the innocent party, ought to have a remedy which he or she would use, certainly, if they had it, to terminate that state of affairs.

2612. Your next point is something about a reproach to the law?—I say it is bad for the influence the law exercises on the poorer classes that it should be open to this reproach. I think the system of unequal laws is a most pernicious system.

2613. The next point you suggest is the remedy. What is your view about that?—So far as I can see there are only two practicable remedies at all: either you must give jurisdiction to the assizes, and that would mean the initial proceedings being taken in the district registry, or give it to the county court, and I have formed the opinion that the assize remedy would not be effective; it would not provide for the requirements of the case at all.

2614. Will you explain why? I see that is under the heading of your next paragraph, Objections to Assizes?—For these reasons—that there are not enough assize towns to meet the difficulty of access. For example, Sheffield people would have to go to Leeds, or Blackburn or Blackpool people would have to go to Manchester, or Liverpool, Stockport, or Stalybridge people would have to go to Chester.

2615. You think the inaccessibility still prevails then?—I do.

2616. Then, as to cost?—Then, there is the question of cost. You have the cost of counsel's fees, and then you have the cost of conveying and keeping the witnesses. Then, when you come to the solicitor's bill, you have what always constitutes the largest item in a solicitor's bill in comparison with the county court, and that is instructions for brief; whereas, in the county court, you get from one guinea up to three guineas, at the assizes you get from seven guineas up to an unlimited figure, but seven guineas would be quite a minimum, so that those three items handicap you, assuming the jurisdiction were given to the assizes, and, in my opinion, make it still so expensive as to be ineffective.

2617. You also add delay. Apparently the number of assizes in Lancashire are four in the year?—Yes.

2618. The county court is sitting—how often?—I do not know any town of any importance in Lancashire that has sittings less than twice a month. If you go to Manchester, they are sitting almost continuously, I should think.

2619. You instance Blackburn. How often does Blackburn sit?—I instance my own town, where the county court sits two or three times a month. Then a case would actually be tried on the first day, that is the advantage I see, and, speaking for my own circuit, on the selected day; there would be no question of attending, as at assizes sometimes, two or three days when the case is in the list, and waiting. You would know when it was going to be tried, and it would be tried.

2620. You go on to say those objections do not apply in the same degree to the county court?—That is so, because the witnesses would be on the spot. They would be at home close to the court, and would be able to go home every night. Then, it occurs to me in divorce jurisdiction, if it were conferred on the county court, one of the parties, that is the defendants, would not have to come from a great distance. At present, in the county court, we can bring people from Cornwall to Bury as long as the cause of action arose in Bury, but in divorce jurisdiction both sides would be on the spot.

2621. But they might not be?—They might not be, but the witnesses would be.

2622. The witnesses on both sides?—Probably. I can conceive cases where they would not be. The rule would be that the witnesses on both sides would be in the locality.

2623. With regard to professional witnesses, what do you say?—I was thinking of doctors. It is a great advantage to doctors not to have to be taken down to assizes a long distance from their work. If they are on the spot they can be called very readily, and I have found that doctors are very much more ready to come to the county court, they know they will get away quicker than when they go down to assizes.

2624. Is it your experience that these cases frequently involve the presence of doctors?—I am sorry to say a great many cases, especially those cases in which it is a question of venereal disease, of which there have been a number.

2625. Are those, in your experience, frequent?—I have 11 out of 203. I have marked 11 in which those allegations were made.

2626. What was the form that took, an allegation of cruelty?—Yes. It would almost certainly be acted upon without anything else. If the magistrates were satisfied that disease had been communicated they would make an order as a matter of course, speaking of my own local experience.

2627. In those cases doctors are required?—They are essential.

2628. You have dealt with cost, which is your next paragraph, and the delay. Would you pass on to the other points, as to suitability for any other reasons?—It has been said it would be a drawback that there should be a number of tribunals scattered all over the country instead of one tribunal in London, but, I think, instead of being a drawback, it would be a distinct advantage that there should be these local tribunals, because, in the first place, the judges know the habits and manner of living, the conditions of life under which these local people live, and they are very much better able to weigh their evidence than when they do not understand them. A High Court judge, when he comes down to assizes, is only an occasional visitor and does not really understand, unless he happens to come from the locality, the conditions of life under which the people live. I think that is a most essential thing in this divorce jurisdiction. If you know the conditions of life you can understand a great deal.

2629. A local knowledge of the judge as to the habits of the people is useful?—Yes.

2630. Does that equally apply to the registrar?—Yes, in the same degree. The registrar has to live within the limits of his court, and he practices, in the majority of cases, within the limits of his court, and knows all about the people and their conditions of life. I think that is an advantage which has not been sufficiently realised.

2631. If a jurisdiction of this character were conferred on the county courts, would you make it obligatory on the registrar to see that the people put their papers in proper shape if they wanted to do the case themselves?—I think I should. The registrar exercises that supervision now, to a large extent where persons present papers unrepresented by a solicitor, and I think he ought to do it as part of what he is paid for doing.

2632. To make it part of his official duty?—I think so.

2633. The next point you have referred to is the question of collusion. Will you tell us your views about that?—I do not think there will be the collusion people seem to expect at all. There is a great difference between the conditions of life of the industrial classes of Lancashire and of the better classes. I think people who have to work hard for a living do not have the same inclination or opportunities, perhaps, for those "arranged" cases that exist amongst persons who lack occupation and who are idle. I think work has a tendency to repress anything of that sort, and I really do not think, and I am speaking with deliberation, that there will be the collusion that is expected.

2634. Does your experience lead you to the conclusion that the cases will be real and not arranged cases?—Unquestionably. They are most sad when they arise. There are not so very many of them, but when they arise they are most sad, and the consequences are so very miserable.

2635. Your next head of evidence is with regard to separation orders, their extent and effect, and whether any amendments should be made in respect of that branch of the law. You say you have had 1,032 cases during the past 10 years, of which 203 were under the Married Women's Act. Those 1,032 were magisterial cases?—Yes.

2636. Those are what you have mentioned?—Yes; I have given some particulars.

2637. Should that jurisdiction be retained, or is it desirable to throw it on the county court?—It should certainly be taken away from justices. Justices administer that jurisdiction at present, but I think if it were taken away from the justices, other than a stipendiary magistrate, and were conferred on a court presided over by a lawyer—a county court judge—that three fourths of the cruelty cases would disappear. The judge would not attribute any importance to a large number of cases that charge cruelty which the justices will now act upon.

2638. What is it that is the defect, in your view?—The commonest case of all is where a man is violent to his wife when he happens to get drunk. She will tell the magistrates time after time he is a very good husband when sober, but it is when he is drunk, and it may be he gets drunk once a month; at the week-end he breaks out. In those cases they ought not to be separated. The man is a good husband, works hard, and frequently does not lose a day; he does go on the drink occasionally, and then, perhaps, beats his wife, or puts her in the street or locks her out, and repents in about two days. In those cases they ought not to be separated, and they are separated.

2639. In those cases is it usual to grant an order?—Undoubtedly; that is where a charge of drunkenness is taken into consideration, and I do not think it ought to be by the justices. I do not think the county court judge would do it, and I do not think stipendiary magistrates do it.

2640. Are you speaking on that point from actual knowledge of cases in which it has been done?—From actual knowledge in a number of cases.

2641. That is to say, it is granted too lightly?—Yes: I should say in the larger number of cruelty cases the cruelty is committed when the husband has been drunk, and not because he is a worthless husband at all. I have in my mind cases where he is a good workman and never loses a day, and does drink occasionally, and does something to his wife he ought not to and which he is sorry for.

2642. If that jurisdiction were not taken away is it desirable to limit the power to make permanent orders, and make them only permissible for a time?—Yes, I think that would be a very good remedy. I do not think you can take away altogether the jurisdiction to separate husband and wife on grounds of cruelty, because there are undoubtedly cases of cruelty where they ought to be separated. I do not think you can take it away altogether, but I should transfer the jurisdiction to somebody who will proceed on some recognised principles on the question of cruelty.

2643. I was putting it further than that. Supposing it were transferred, or even left as it is, would you suggest that the power to make an order for separation should in the first instance be given for a length of time?—I think each case would have to depend on its own circumstances. In some cases cruelty is so obvious that the wife's life would be in danger, and you could not possibly make it a temporary separation.

2644. In other cases?—I certainly would in cases where the judge or the judicial tribunal thought that possibly it was only a temporary outbreak and that a little separation, a short separation, would cure matters. There are numbers of those cases.

2645. It would be better to give a power to make a separation for a time?—I think that is an excellent suggestion.

2646. Have you any points to make on this branch on the question of desertion? Is it necessary there should be any order for separation in desertion?—None whatever.

2647. As distinguished from an order for maintenance?—None whatever. The cases of desertion where a man leaves his wife and goes to America are rare. I do not know what you would have to do in those cases, but they are rare. The commonest cases of desertion are the man has left for a few days and no opportunity has been given to him to return before he is separated.

2648. Do you find in practice applications for orders of separation are made after a few days' desertion?—Undoubtedly.

2649. And granted?—Within a fortnight, and granted.

2650. For permanent separation?—Permanent separation.

2651. When you say that, do you mean that is a solitary case?—Not at all; it is quite typical of all cases of desertion that come before justices in my experience, that it has existed a very short time. The probabilities are that the man has either put his wife in the street and locked the door and she has gone home to her mother, or else he has gone out and remained away a few days and the wife has gone to her mother; but there is not, in practice, a sufficient time allowed to elapse between the act of desertion and bringing it before the justices.

2652. You say a considerable number of cases are trivial?—Yes.

2653. Will you tell us what your observations on that are, please?—They get married, as we all know, very young in Lancashire, and they do not seem to understand what married life requires of them in mutual forbearance, or anything of that sort, and one or the other in a fit of temper will do things that they certainly do not do when they have lived together a little longer time. I think a great number of these cases of cruelty, contrary to the experience in the divorce court, are between very young people in their very early stages of married life. They get better as they go on; they get to understand one another better.

2654. Therefore you would very carefully exercise the jurisdiction in the early stages?—Yes. Then there is a different class, which is quite common, where there is a grown-up family, and they are all working and getting good wages, and the father is getting on in life, and he is getting too old to work, and they would rather be without him. One has had experience of cases where the father has been placed in a very difficult position. Unless he behaves himself very well the magistrates will be applied to, and they will be told he contributes nothing to the support of the household: there is no maintenance coming from him, there is neglect to maintain. The magistrates will separate the husband from the wife and family, and it is exactly what the wife wants. She does not want maintenance. She frequently says: "I do not want maintenance: "I am content to have a separation order," because she has children to look to. I have known a number of cases of that sort, a man getting on in life, and they wish to get rid of him.

2655. How do you propose those cases should be dealt with—no order?—No order, certainly not.

2656. But leave them to make the best of it?—Yes.

2657. You have some further objections apart from the special views you have indicated about cruelty, with regard to the justices' tribunal. Will you summarise those?—In the first instance this jurisdiction, as we all realise, is a very delicate jurisdiction, and the responsibilities it entails are not realised or appreciated necessarily—I mean realised or appreciated by the justices. They have no training of any kind; now they have no qualification, and you might have a couple of men of the status of common jurors and nothing else sitting on the Bench. Although there is a clerk he is not bound to be a lawyer. If he is a lawyer he is not always there, and there is a very junior assistant to guide the two justices on matters of law, which is very undesirable. Then, again, the business is so—if you will pardon the expression—rushed in the atmosphere of a police court. There is so much to do in an ordinary day's work in the police court, they rush through these cases in a way that a legal tribunal, a judicial tribunal, would not do. A large Bench will begin trying a case, and the magistrates will leave in the middle of the case and it will be reduced to two. I do not think that is a wise thing. Again, this is really a civil jurisdiction, and it is not desirable that it should be mixed up with the atmosphere of a police court and criminals, and all the rest of it, apart altogether from the undesirable element in those who frequent the police courts as spectators. I think a civil jurisdiction ought to be kept as such. Then there is the question of notes of evidence. I have myself experienced in the one or two cases I have appealed, the difficulties arising from the fragmentary notes that are taken very often, not by a lawyer at all, without having his mind directed to the real issue, and the appeals are greatly handicapped for that reason, even when the man or the woman has the means of appealing, which does not often happen.

2658. Is it your view that this class of case should have a shorthand writer?—No, but I would make the magistrates' clerk take the notes himself or provide for an effective note being taken.

2659. I daresay you have seen some observations of the Bench from time to time on that point?—I have.

2660. There is one other small point. You think that the registrar might act for the King's Proctor in cases if that were a regular rule?—I certainly think he has the facilities that no one else has. Not only does he live in the locality, but the bailiffs department would be very useful for that purpose. Bailiffs are a different class of men now altogether from what they used to be: they are quite intelligent and a very good sort of men, ex-police constables and that sort of men, and I think the registrar, apart from his personal knowledge, would be able to utilise the bailiffs department for the purposes of investigating any suspicious cases.

2661. Your next point is, even assuming some jurisdiction were given to the county court, it should be of a limited character. Would you summarise what you wish to say about that?—I think it ought to be limited, because if it were not limited in some way to the class who really require it, it would give some foundation for the argument against it, namely, that it is increasing the facilities. I think you must limit it to the class who require it, and not leave it to anybody.

2662. What are those limits?—That is a matter on which there seems to be a great deal of difference of opinion, but I should think myself an income of about 150*l.* a year or 3*l.* a week. A man whose income does not exceed 3*l.* a week ought to be at liberty to file his petition in the county court. I do not understand the meaning of the words "joint income," because the wife's income is no use to the husband. You have cases where the wife is earning, if a 4-loom weaver, 25*s.* to 30*s.* a week, the husband might be a labourer earning less money, so that the husband in many cases in Lancashire is earning less money than his wife. I do not think the joint income ought to enter into consideration at all, seeing the husband can make no use of it.

2663. There may be cases in which the wife has no income, but her husband is a rich man. Should it be applied to such cases as that?—In those cases the husband would have to provide for the wife's costs, quite properly.

2664. Your point is that provision should be made to apply only to that case which required the remedy?—Precisely.

2665. Your next point deals chiefly with simplicity of proceedings and trial by judge alone?—Yes. I certainly think the trial should be by judge alone. Apart from any other question there is the question of time. Jury cases take such a lot of unnecessary time. We have none on our circuit, but on those circuits where they have jury cases, the statistics show that they interfere with the business. There is no room for eloquence in the county court such as appeals to a jury.

2666. You have dealt with London. Have you any experience about that?—I have no London experience, except I think that this is a question to be determined rather by provincial opinion than London opinion London opinion is directed towards centralising everything in London, both amongst the Bar and solicitors. I think this is a question more to be determined by the opinion of the provinces.

2667. You suggest damages should be limited. Would you maintain the right for damages at all in these cases?—Perhaps it is open to doubt whether there ought to be damages. I have considered that. It is mentioned in the Report of the Lord Chancellor's Committee that damages should be limited to 100*l.*, and it occurred to me that was a fair sum, but I have considered that the question of damages, perhaps, ought not to enter into consideration at all.

2668. Do you consider it desirable that the judge should have power to make some order as to maintenance?—Yes.

2669. Against a guilty man?—Undoubtedly, for this reason: it would deter; it would act as a deterrent if he gave his wife ground for divorce; he would have to keep two establishments afterwards, his wife's, she being the innocent party, and himself as well.

2670. I am speaking about adultery and a co-respondent; that is the only case in which damages come in?—I think that the co-respondent in the class that we are dealing with would be a man who could not pay any large sum for damages. All that could

be got from him would be probably a weekly or a monthly amount.

2671. You would leave the judge power to make some order?—I would leave the judge discretion to be exercised in each case, but I should limit it in some way.

2672. You would leave power to remit cases to the county court?—I think so; as long as the county court was established, the High Court ought to have power to remit to the county court in a proper case.

2673. I do not know whether it is necessary to go into the question of the decree nisi?—No.

2674. You wish to retain the right of audience to solicitors in the county court the same as they have now in other cases?—Yes, it would not be effective, otherwise. You cannot be sure of your counsel in the county court; you may get a man, and if the assizes are on he would not come down.

2675. There are a number of points you mention, and I think most of them you have covered. Is there anything you think wants special attention directed to it; if so, will you direct your mind to it?—There is one thing. Are we still on this head?

2676. I am following your note and nothing else. Some of these matters are not worth pursuing in detail at present, but if there is anything special that you wish to call attention to out of them I should be glad to hear you?—There is one thing I should like to call attention to, but it is not on my notes. I certainly think that actions for breach of promise of marriage ought to be abolished. It has a great bearing on this question. There are numerous miserable marriages which take place under the compulsion of an action for breach of promise of marriage. I have seen some of them myself and heard of others, and if actions for breach of promise of marriage were abolished I think it would have a direct bearing on this question of divorce.

2677. Do you mean it leads to a sort of compulsory marriage?—I do.

2678. With consequent difficulties?—I do, misery on both sides.

2679. On that I should like to ask you what your note intends to convey about immorality, at the bottom of the page?—There cannot be the least question that the effect of the exercise of this jurisdiction under the Married Women's Act of 1895, as at present exercised by justices, is to encourage immorality. It is the actual result. You can see it in daily experience.

2680. How does it operate?—I cannot do better than give you cases I had in court the day before yesterday. At the court, at Bury, there were two women who appeared at the instance of the same plaintiff, both of whom had separation orders, and both of whom were living with another man in consequence of being separated from their husbands. The way the thing arose was that it turned out they had given the names of their husbands as the debtor, and when the matter came to be investigated in court it was found the men were not their husbands but were men with whom they were living. Those are not isolated experiences. It happened the day before yesterday and happens almost every court day. They do set up separate establishments, the man goes his way and the woman her way; they are young, and I cannot see how you can expect anything else but immorality as the result of permanent separations without divorce.

2681. It has been suggested that would occur whether there was an order or not. What is your view about that? If people meant to separate would you separate them without an order?—I do not think so, because there are so many of them that are trivial cases. They would come back again all right but for the separation order. The separation order acts as a bar in a number of those cases which result in immorality. If there was not any separation granted at all they would resume cohabitation.

2682. Do you find that even though there has been a separation order cohabitation is frequent?—Not frequent, but occasionally I have seen a woman who has come to the magistrates twice or three times for a separation order, and I have urged that that in itself shows the jurisdiction has been trivially exercised, but they will grant a second one and a third one sometimes.

2683. For what class of case, cruelty or desertion?—Cruelty and desertion. Desertion mostly, I should say.

2684. As to the extent of immorality, you say reliable data outside one's own experience are difficult to get. Are you able to get any statistics about this?—I went carefully into the statistics and I found them quite defective to throw much useful light, for the reasons I mention. There is nothing to show the grounds on which a separation order is granted, or the duration of marriage, and the age of the parties: there is nothing in the birth or bastardy statistics to show whether the parties are married or not, and there is nothing to show the number of separation orders discharged for adultery.

2685. In your conclusions you rather base your view upon your own experience over a number of cases?—Yes, from my own experience.

2686. The other points, I think, you have already sufficiently covered, till we get to some subsidiary objections to county courts, that is to say, objections made which you take exception to. What have you to say about that?—It is alleged by those who are against conferring this jurisdiction on the county court that they are already over-loaded. One can speak best from one's own experience of one's own circuit. I think there is no foundation for the suggestion that the county court is already overflowing with work, or that the judge has no more time, or the registrar has no more time. I think the best example of that can be given from the Workmen's Compensation Act. Take our circuit, for example, No. 5 Circuit, I have got out some figures. In 1908 the judge tried 725 actions under the ordinary jurisdiction. He tried 336 Workmen's Compensation arbitrations, so that if, as the fact is, he was able to try half as many cases again as he had to do before, and still find himself with plenty of time, that clearly shows that that addition of a large quantity of work to the county court has not produced the congestion that was expected.

2687. What population is there in the area of county court circuit No. 5?—Over 1,000,000. Workmen's Compensation arbitrations are the heaviest class of work; they involve heavy inquiries.

2688. Do you attend the judge all round the circuit?—No, only in Bury.

2689. Your experience is that if a jurisdiction such as is suggested were conferred, the work could still be coped with?—Yes, and I have my judge's authority for saying that is his view. I have his authority for telling this Commission that.

2690. (*Mr. Rufus Isaacs.*) Whose authority?—Judge Bradbury. He would rather be without the jurisdiction, but on public grounds he says it is necessary.

(*Chairman.*) We have not all the county court judges.

(*Mr. Rufus Isaacs.*) I wanted to know of whom he was speaking.

(*Chairman.*) If you desire, any particular judge can come.

(*Mr. Rufus Isaacs.*) I only wanted to know to whom he was referring.

2691. (*Chairman.*) How does this view you are expressing about your own court, according to these statistics, enable you to speak as to the general practice of the county courts?—Because I have experience as an advocate outside my own circuit on other circuits, and, although this is more a question for the officials, because the officials best know what goes on and what the facilities of their own courts are, one can tell whether there is any congestion on a circuit, even practising as an advocate. I know of no congestion anywhere on any circuit except—perhaps I do not know whether I ought to mention any particular circuit. I do know of one circuit where there is congestion.

2692. It is enough to say there is one?—You do not wish me to name it?

2693. I do not think we need go into comparisons with Judge Tindal Atkinson here?—I only wish to mention it generally. I only know of one circuit

where there is any congestion, and there are reasons for that.

2694. Now as to the publication of reports, have you anything which enables you to speak upon that point? I do not want in these cases to ask witnesses mere matters of opinion, but if there is any ground for their opinion?—Somebody said the working classes do not read the papers. Speaking for the working classes of Lancashire, that is wrong; they read the newspapers very intelligently indeed, and my own opinion is that newspaper reports of cases involving adultery ought to be prohibited. Other cases, those cases not involving adultery, I should allow to be published as at present, but no decent paper publishes the report of a bastardy case, for the same reason no decent paper would publish a report of a divorce case involving charges of adultery. But they should be prohibited.

2695. I see no connection. You say they do not report bastardy cases; there is no prohibition?—No; their own good sense restrains them.

2696. You would extend that good sense to adultery cases?—If they do not extend it themselves. I should say some papers would not, even though there were no prohibition, publish them, but I think it ought to be prohibited.

2697. The last point is a short statement of your view as to amendments which I should like you to state the grounds of?—The main outstanding amendment is to bring the existing law within the reach of the poorer classes. So far as regards questions of principle, the only amendments I should like to suggest have, I think, been suggested, and that is that the sexes should be placed upon an equality. I do not believe in this theory of the accidental or "casual" sinner at all. I think that both sexes should be on an equality. I also think that cases of permanent lunacy —one has experienced them—are worse than cases of death, and there certainly ought to be a divorce on that ground, and probably habitual drunkenness, when it is clear it is incurable, and I also, with hesitation (because it is a very limited class), express the opinion that penal servitude, at any rate for life, should be a ground for divorce; whether for a less period or not I express no opinion.

2698. I should like to ask you upon only one of those, the equality point. In your experience of the class of cases that is likely to come for divorce, do you find any valid ground for distinction between the sexes?—I cannot say I do. If it were really an accidental case a good wife would be able to deal with that herself. It might be safely left to her. You ask my own experience: I know of no case in which the same law ought not to apply to the woman as applies to the man.

(*Chairman.*) I think that is all your proof deals with.

2699. (*Mr. Brierley.*) With reference to these separation orders, I understand you to suggest that the whole of the existing jurisdiction of the magistrates, except that on the ground of aggravated assault, should be transferred to the county court?—I do.

2700. The cost I understand you to place upon these *in formâ pauperis* cases in the county court is 10*l.*, less the court fees?—Yes.

2701. Are there not a very great number of women who would not be able to provide that sum at all?—I think they would apply to their friends, or their families, that is the father or the mother; of course, she would be a young woman.

2702. You have rather assumed all along that the women are invariably young; but assuming she was not a young woman, what then?—I do not think that 10*l.* would be prohibitive.

2703. I know that in your district the women are probably better paid than in most parts of England?—That is so.

2704. Do you suggest, in cases of desertion, there should be no right of application to the magistrates?—I do.

2705. What is the woman to do whose husband has deserted her? Take the case of a woman with two or three children; her husband leaves her and refuses to provide her with maintenance. If she goes to the poor law she is told to go into the workhouse?—I do not think she is told, necessarily, to go into the workhouse.

2706. Is not that the case in a great many unions?—I do not think so.

2707. Perhaps it may not be?—I think that the poor law authorities would take the husband in hand for her.

2708. And give her relief in the meantime?—I think so.

2709. You said you were convinced that these orders were made on trivial grounds because two or three separation orders had been made in cases of desertion. Why do you say that the ground was trivial because of that?—Because they have been made after too short a period of time to say there is desertion.

2710. What is the wife to do except to ask for an order, when she is deserted by her husband?—If it has lasted a long enough period to embarrass her, a fortnight or three weeks, perhaps then she should apply to the poor law officials rather than apply to the magistrate.

2711. Do you know the Act of 1886 was passed especially to relieve wives of the necessity of applying to the poor law guardians in such a case?—That was the distinction between the Act of 1886 and 1895.

2712. Would you be willing that the state of things should be restored to that which existed under the Act of 1886?—It is far preferable that there should be a maintenance order without a separation order.

2713. I thought you rather suggested even the right of making a maintenance order should be taken away from the magistrates?—I beg your pardon, I did not intend to suggest that.

(*Chairman.*) I think the witness was speaking of separation. It is apt to be confused.

2714. (*Mr. Brierley.*) I thought you wished to deprive the magistrates of the power of granting a maintenance order?—No.

2715. I suppose you say these separation orders were granted by magistrates on the ground of cruelty for trivial reasons from your own observation?—Yes.

2716. I think you said that no county court judge would grant a separation in the case of a woman having received a thrashing, say, once a week, by a drunken husband?—I do not think I said "once a week."

2717. Do you consider even a monthly black eye is part of the obligation a woman undertakes when she enters upon matrimony?—You have to consider the circumstances under which she got that black eye. She has been very aggravating sometimes when her husband has had a little drink, and it does not require much to provoke a man to violence when he is drunk. If she has the sense to leave him alone she will not be touched.

2718. You think even then no such thing as a separation order ought to be granted, although it has extended over a considerable length of time?—One's experience of the administration of that Act is that persistent cruelty may take place on a single day. They call it persistent cruelty if there is a bad assault on one day, or a series of assaults on one day.

2719. That may be so, but that was not the illustration you gave. I am rather surprised at your saying you had 203 cases, in which as many as 44 of them adultery came in question. I suppose the great majority of cases do not come into the hands of solicitors?—I would not like to say the great majority, speaking of our division.

2720. Do you generally find they consult solicitors?—I think so, even when there is a free summons issued by the justices.

2721. You mean solicitors, as a rule, appear in these cases?—Yes, I should say in the great majority of them solicitors appear in the Bury division.

(*Chairman.*) Would you ask about the fee to the solicitor and attendance in appearing?

2722. (*Mr. Brierley.*) What is the charge?—A solicitor in an ordinary case will charge the complainant one guinea, and the defendant two guineas. We have a scale locally. Our Law Society says no solicitor is expected to take a case in the police court for less than one guinea. No solicitor will take a case in the police court for less than one guinea.

2723. You say that is so from these 44 cases?—Yes. I have looked up all the papers purposely.

2724. I do not know what the meaning of this is in your memorandum. When giving arguments that you believe divorce is demanded by the poorer classes, you mention trade unions. What does that mean? Have there been any resolutions passed by trade unions in your district?—I have ascertained the local trade unions' opinion in my district, and I found that the headquarters of trade unionism have not dealt with this question. It is a domestic question, and they seem to deal more with questions of wages. But locally I have the opinion of an important local labour official, and he says it ought to be granted. I have a letter from him, and he instances several very hard cases which have come under his own observation.

2725. You do not mean the matter has been discussed by the trades unions?—Not officially. That is rather strange. Officially they have left it alone.

2726. You mean they have discussed it?—Informally.

2727. Is that the cotton operatives?—Textile operatives.

2728. What conclusion do they come to?—He says that petitions have been signed, and it has been expressed that there ought to be an easier and less costly way of obtaining divorce than at present, and so say I. He does not suggest the working classes are more inclined to go wrong, and gives instances, but not officially. I asked Mr. Ramsey Macdonald, and he said it had not been discussed.

2729. (*Judge Tindal Atkinson.*) With reference to the cost in the county court, I suppose that would be regulated by one of the three scales in existence, which would be modified to meet divorce cases?—I should say so.

2730. There are scales A, B, and C. Do you suggest the judge should have a discretion to say whether the costs should be allowed on either one of those scales?—I do.

2731. If they are allowed on Scale A the cost would be extremely moderate?—The cost would be extremely moderate, but the procedure would not be the same in divorce cases, and probably the expense would not be so high as the expense of the ordinary jurisdiction of county courts. I should have suggested that there would be a simple petition, something like the Workmen's Compensation request, with attention directed to the points, and they can be filled up, and no Citation, and just the Answer. I think Scale A would cover undefended cases.

2732. Therefore the expenses would principally consist of the expenses of the witness in getting to the court, the solicitor's fees, or counsel's fees, in conducting the case?—That is so, and I think it would be generally a solicitor. They could not afford a counsel's fee. Counsel will not come to the county court for less than four or five guineas when they have to come from a distance.

2733. If you could get counsel who would consent to do cases of this kind for one guinea, it would add very little to the expense?—It would add practically nothing to the expense if counsel would conduct them for a guinea.

2734. First of all, with reference to the question of the assizes and the county court, you have had experience of assize work, have you not?—Yes.

2735. The judge usually takes his criminal cases first when he sits alone?—At Manchester there are two judges, and they take criminal and civil cases together.

2736. I was thinking of where the judge sits alone?—Then he takes the criminal cases first.

2737. And the civil cases next?—That is so.

2738. It is impossible for the judge to know what length of time his criminal cases will take?—Quite impossible.

2739. He has to go from one town to another on a fixed day, and therefore it would be a great difficulty for a High Court judge to fix a day on which he could be certain to take divorce cases?—I should say it would be impossible.

2740. That might involve the parties spending two or three days waiting before the cases were reached?—That was one of the things I intended to draw attention to.

2741. With reference to county courts, do you think that the jurisdiction should be exercised in every county court town, large and small, or would you fix in each district some four or five centres to take these cases?—I think I should allow the petitioner to file his petition in his own local court, and I should allow or empower the judge to decide which of the courts on his circuit was the most convenient to try them at.

2742. I daresay your experience is that in the larger towns you get very often the heavier cases to try?—That is so.

2743. And the judge sits more often in the larger towns than he does in the smaller towns?—That is so.

2744. Therefore he would be able to give in his larger towns a special day for the taking of divorce cases?—No doubt, just as he does the judgment summonses now.

2745. In your experience of this class of cases, does it not often arise that the conduct of the husband is such that the children should immediately be taken out of his custody?—I quite agree.

2746. So that if proceedings be commenced in the county court, and the judge is accessible, and an order can be obtained from him, would you take the custody of the children from the father?—Yes, that would follow.

2747. As the law is at present, I believe the parties must come to a High Court judge in London to effect that?—Except the justices have power to deal with questions of custody of children.

2748. That is only under a separation order?—Yes.

2749. If it is not a case which comes within the separation order, only the High Court judge can deal with the custody of the children?—That is so.

2750. Do you think it would be a very good thing that the county court judges should have the power to deal with the custody of children?—I have thought so for a long time.

2751. One witness who was called suggested that the bailiffs were not altogether reliable men to find out information. What do you say about the bailiffs, as a rule?—They are now a very much better class than they used to be. I am speaking for those on our circuit. I think they could thoroughly be trusted.

2752. Do you think they are likely to collude with the parties for money considerations, or anything of that sort?—I do not. I have never known a case of a bailiff being bribed in my court yet.

2753. What is the furthest place distant from your town in your district; would it be more than 10 miles?—Nothing like as much; as the crow flies, not more than four at the outside.

2754. So that there is ready access over the whole of your district to the town of Bury?—Quite ready access.

2755. In dealing with divorce cases, in your opinion, are not the questions which arise in the Workmen's Compensation cases of far greater difficulty than those which would arise in dealing with a divorce case?—Unquestionably, I should say.

2756. Are not attempts at imposition on the court by parties to Workmen's Compensation cases likely to be just as great as they would be in divorce cases?—The registrars find that that is so. The registrars, as you know, exercise a jurisdiction already in ascertaining whether lump sum settlements are fair as between the payer and the receiver, and they have to investigate those matters to protect the working men from imposition, and they could just as well protect the public from imposition in divorce cases.

2757. So that the detection of imposition is quite as necessary in Workmen's Compensation cases as in divorce cases?—It is a jurisdiction he already exercises, and it is necessary.

2758. As regards uniformity of decision and treatment, that would be secured in every district, so far as that district is concerned, by there being one judge?—Yes, that is so. What obtains in one county does not obtain in another county. In Germany there are 171 courts, I believe, exercising this jurisdiction.

2759. Do you anticipate that in your district of Bury there would be a great number of these divorce cases in 12 months?—No, I do not. It is more, as I have told the Chairman, that the cases which arise are so very sad, and one feels so sorry for the people, but there would not be that great number.

2760. Do you think there would be more than 2 per cent. of every 1,000 marriages?—I would not like to answer that question, because I have not gone into the particulars, but I think there would not be nearly as many as are expected.

2761. I daresay there could be a great deal of saving of the time of county court judges as they work their circuits at present?—I think if the registrar was given extended jurisdiction, there would be a lot more time for the judge to deal with these cases and heavier cases.

2762. (*Sir Lewis Dibdin.*) I gather your view is that every county court judge should have this jurisdiction, and exercise it in such of his courts as he thinks right?—That the trial should take place in such of his courts as he thinks right, but that the proceedings should be instituted in any court.

2763. But that every judge should have the jurisdiction?—It should be left not to the Lord Chancellor, but to the judge.

2764. Every county court judge?—Every county court judge.

2765. In calculating the economy in undefended cases, you have assumed counsel are not employed?—To a large extent I have assumed that.

2766. You have told us it is practically impossible to get counsel, or so difficult that the expense is prohibitive?—Yes, that is so.

2767. You are, no doubt, aware that the Lord Chancellor's Committee, in reporting in favour of county courts, regarded it as absolutely essential in these undefended cases that the judge should have the assistance of counsel?—Yes, I am aware of that.

2768. You do not agree with that?—On the ground of necessity, I do not agree with it. You must let solicitors have a right of audience if it is to be effective. Apart from counsel's fees, there are the instructions for brief, and that kind of thing, which swell the bill.

2769. I wanted to get what I gather to be your opinion in actual circumstances. It would be impracticable to have counsel?—I think so.

2770. You have said that the alternative was assizes or county court, and you have dealt with the impracticability, as you regard it, of assizes. Have you considered the third alternative, the suggestion of Mr. Justice Bargrave Deane? I daresay you have seen it in the newspapers. The suggestion was one of the divorce judges, either one of the present staff or an additional one, as necessity dictated, going down to different centres in the country and taking these cases?—Until I saw it mentioned by Mr. Justice Bargrave Deane I had not considered it, but since I did see it mentioned I have considered it, and I think it is open to this. It is essential you should understand the conditions under which these people live, and no one, except someone in touch with them, like the county court judge, does understand those conditions. A London judge would not necessarily do so.

2771. Is that more necessary than in ordinary criminal work on assizes?—I think so.

2772. Why?—There is a vast difference between a Lancashire cotton operative and a London clerk. They are two wholly different beings when you come to the question of their domestic establishments and the way they live. The same principles of crime run more or less throughout the country.

2773. Do you not think if a judge was in the habit of going down to Lancashire, amongst other places, he would acquire the knowledge you speak of?—No. I think he would have to be brought up amongst the people to understand it properly.

2774. I gather that you regard this jurisdiction in marriage cases as a matter of very great seriousness and importance?—I do.

2775. I think your view is that any remedy that is open ought to be open to the poor as well as to the rich?—I do.

2776. Would not the suggestion that you make have practically the effect of giving to the rich man a more expensive and better tribunal, better in that sense, with a London court, and leaving the poor man to the country tribunal? Why should the London court exist at all?—Why should it exist?

2777. If your suggestion is adopted?—I think there ought to be a Divorce Court in London for many reasons. It is part of the judicial system, and I should not like to see it abolished, but I think the county court judge has the confidence of the working classes, just as the High Court judge has the confidence of the people in London.

2778. I am not combating your suggestion of the county court, but I am trying to get to the bottom of it. I thought you said a man who has less than 3*l.* a week should be allowed to go to the county court, and the man who has more to come to the London court?—I excluded London expressly from my consideration.

(*The Archbishop of York.*) Would it not be better to say "High Court"? It is not a question of London; it is a question of the High Court.

2779. (*Sir Lewis Dibdin.*) Yes. You regard the county courts as the proper tribunal for men of small means?—I do.

2780. Men of large means are to come to the High Court?—Yes, that is so.

2781. I want to know why. The county court exists for small debts and small contracts, a limited jurisdiction of that kind. The divorce question is surely quite as important, whether the parties are poor people or rich people?—Yes.

2782. Certainly as important to the parties; is it not so?—Quite so.

2783. And I suggest to you it is as important to the State?—Yes, quite.

2784. There is no difference whatever?—None.

2785. If that is so, I suggest to you that there is difficulty in the maintenance of a more expensive court, only open to the rich, if you have a court established which, in your view, is considered adequate to deal with the poor?—The answer to my mind is that the county court was established for the poor man, and the High Court exists for those who can afford the expense of luxuries, of very expensive counsel and numerous other very expensive items.

2786. Why should the State pay for the rich man's luxury by maintaining the court in London?—In the abstract there is no reason why it should.

2787. You say the county court was established for the poor man, but it was for the poor man's contracts and the poor man's debts?—No, for the poor man's civil injuries, according to the preamble to the Act.

2788. Is there any analogy between, say, a small shopkeeper's debt and a great contract which is dealt with in the High Court? It is obvious one affects very few people, and the other a great number; one small interests and the other large interests. It is so, is it not?—Yes.

2789. As you have told me, the case of a divorce is quite different. The importance is the same in whatever class it occurs, is it not?—The importance is the same.

2790. Both to the individuals and to the State?—Yes, quite.

2791. I will not keep you longer upon it, but I do not see why you are in favour of making the maintenance of a different class of tribunal to deal with the rich and to deal with the poor in these marriage questions?—I am in favour of giving the tribunal appointed to deal with the poor man's debts and contracts the same power to deal with this other issue.

2792. Let me ask you a few questions upon separation orders for one moment. I gather your objection to the jurisdiction of justices is that these orders are granted far too readily and far too lightly?—Yes, that is the main objection.

2793. And that in the result a vast number of orders are granted which, in fact, ought not to be granted?—Precisely.

2794. There are, I think, about 7,000 orders granted in the country?—Rather over.

2795. Your remedy is to confer this jurisdiction upon a tribunal more competent to discharge it, in your view?—That is so.

2796. Do you know the remedy has been suggested, not that these orders should not be granted, if they have been granted improperly, but that they are cases where the parties should get something more than a separation order, that they should get a divorce. That is not your view, I take it?—Would you mind putting that again?

2797. Your view is that separation orders are granted which ought never to be granted?—That is so.

2798. You would not think, therefore, that the 7,000 orders that are granted every year are cases where, if right were done, divorce ought to have been granted?—No, not all of them. I purposely excepted the real cruelty cases.

2799. Admitting there are some, you would say that the 7,000 separation orders are no index of what divorces ought to have been granted in those cases?—No, no index of what divorces ought to have been granted in those cases, and no index of what separations ought to be granted if the law was properly administered.

2800. And, therefore, *à fortiori* of what divorces ought to be granted. That is what I mean. When you say this is a matter of civil jurisdiction, in one sense every lawyer would understand what you mean, but it is not really either civil or criminal, is it? Is not this a matter of a *tertium quid*, separate or different from civil or criminal jurisdiction?—In a sense, yes, but if you have to choose whether it is civil or criminal, I should call it civil.

2801. Do you not think that points to what we have at present, a separate court for this particular jurisdiction which does not deal with civil jurisdiction in the ordinary sense, and does not deal with criminal jurisdiction in the ordinary sense?—If the civil court existed, yes.

2802. I am not referring to the magistrates' jurisdiction which exists?—If the existing Divorce Court were effective, I should say, yes.

2803. If by an extension of the Divorce Court the need could be met in the provinces, would not that be the best solution, if it could be done?—If it could be done effectively, but for the reasons I have mentioned I have not seen yet how it is going to be done.

2804. If it could be done effectively that would be the best solution?—I do not think it could.

2805. But if it could?—Yes.

2806. (*Mrs. Tennant.*) You give rather a gloomy presentation of working-class life when you say a large proportion of the applicants for separation orders are elderly women with grown-up families of wage-earners anxious to get rid of a husband who is not able to work?—I did not mean to say a large proportion.

2807. In your proof you group them as one of two main divisions which constitute a large proportion. You would not give to that division the greater number?—No, but it is quite a clearly defined proportion.

2808. Can you give figures in support of that?—I am not prepared with figures, but I can say positively from my own experience it is considerable.

2809. It involves a curious position. Does it not assume the ability of the elderly wife to maintain herself, or the readiness of the children to contribute to her maintenance after she has got rid of their father?—It does, and in those cases they do not usually ask for maintenance. They ask for bare separation.

2810. Is it not remarkable the children should be ready to contribute to the maintenance of their mother after she has for that reason got rid of their father?—You find, somehow, the children stand by the mother, especially the daughters.

2811. In those circumstances?—Yes, until they get married.

2812. Is this experience Lancashire experience only?—Lancashire experience only. I have no experience of London.

2813. Would you be prepared to say such cases form a small proportion?—I should prefer to say a proportion, which has been brought home to my mind by its recurrence.

2814. In arriving at the limitation which should be imposed on incomes of applicants for county court jurisdiction, you would not include the joint income, because the wife's income is no use to her husband?—That is so.

2815. She contributes jointly to the household expenditure and expenditure on clothes?—Yes; it all goes into a common fund, the earnings of the family.

2816. Does not that enable him to preserve more of his income for himself, out of which to save for the expenses of divorce proceedings?—No. You will find in the normal household the sons and daughters and father all turn the money up to the wife, and she keeps the purse.

2817. Assume her income to be 15s.—it may be 20s.—if it were not available he would have to spend his income, or a portion of it, on the household expenditure; that is set free by her contribution?—That is so.

2818. If it be set free he has the disposal of it for divorce proceedings, which otherwise he would not have?—I think if relations become so far strained as to become a question of divorce, you would find the husband was not turning up money to the wife, but saving it.

2819. I want to see why the help she is able to give should not be taken into account in the limitation of income?—I rather meant that the husband could not look to his wife's means as security for his costs in the same way as the wife can look to the husband's means under the practice.

2820. I quite agree. On the last page, under the heading of newspaper publication, you say you are in favour of prohibition, although you think there would be more cases if publication were prohibited?—Yes, I do, because I have had numerous cases where they have begged me to get at the newspaper reporters to suppress the details.

2821. If you think suppression would lead to the occurrence of more cases, is not your recommendation peculiar?—On the face of it it seems paradoxical; I recognise the paradox, but I adhere to my view that publication should be repressed. You will recollect Queen Victoria held that view in 1859 very strongly when she wrote to the then Lord Chancellor. I think if anybody reads that letter to-day it applies exactly.

2822. (*Lady Frances Balfour.*) I want to ask just one or two questions, one again with regard to those elderly women who apply for orders of separation. How are they able to get it, because if they do not prove cruelty they cannot get it against the husband?—It is usually neglect and drunkenness. The husband takes to drink and contributes nothing towards the common purse, and they go to the justices and get an order.

2823. They could not get it unless they proved drunkenness against the man—not simply because he was too old to work?—I did not mean that.

2824. As to the orders for separation, your experience, we understand, is that if either party proves infidelity, the cruelty is not so very necessary; they get the separation upon that?—It is in theory necessary, but in practice it is treated as of small account if the adultery is proved.

2825. In practice, if infidelity is proved they really can get their order for separation?—I find that so.

2826. You do not agree that the accidental adultery on the part of the man should not count; you would make them both equal?—I would, unquestionably.

2827. (*The Archbishop of York.*) I am afraid I am more familiar with the police courts than an the county courts. You said the county courts were mainly concerned with the debts and contracts of people. Do the county courts in Lancashire come much in contact with the class of the population that figures largely in summonses for separation orders?—I should say that they come daily in contact with them. Those are representative of the classes that resort to the county court, except in those cases under the Extended Jurisdiction Act, where business men's contracts are involved.

2828. With regard to the working of the Act of 1895, whether the jurisdiction is in the hands of the

magistrates as now, or under certain limitations, as you suggest, in the hands of the county court, would not the effect of that be proved if there was a larger delay in every case between the summons and the order?—I think that is the very mischief; the short time that elapses is the very mischief.

2829. Whoever exercises the jurisdiction in regard to separation orders, would you be in favour of all cases requiring a considerable length of time between the summons and the order?—Yes, unless you make it a temporary separation only.

2830. Requiring the parties to come before the judge or the magistrate, as the case might be, at certain intervals?—Yes, I think so.

2831. You think the effect of that would be largely to diminish the immorality which you say results from the present administration?—Yes, I do.

2832. You said you were authorised to give the opinion of your judge upon this matter. I notice that he says he would rather not have the jurisdiction at all. Are you at liberty to quote any reason for that observation?—That was on personal grounds. When he considered it he viewed the matter on public grounds, and said it was needed.

2833. With regard to publication, would you feel the same objection you have expressed if a certain amount of detail were given in the judgment of the judge, if the record consisted of the parties' pleadings and the judge's judgment, which would be entirely under his control. I should like to know your opinion, because it has been suggested that would be a means by which some facts would be published of a kind which might act as a deterrent, and yet there would be no dwelling upon improper and undesirable details?—I think in practice it would be so very hard to draw the line if once you get beyond the bare publication of the decree. It would be very hard to draw the line, I think.

2834. Could you not trust the discretion of the judge?—Yes, so far as regards the judge, but it would be so difficult for the judge to indicate what might be published and what might not be published in each particular case.

2835. With regard to the grounds of divorce, you thought that habitual drunkenness should be included when it is clear that it is incurable. Is there any means you know of by which it can ever be said that a case is incurable?—I have never known the case of a woman cured who had absolutely taken to drunkenness, but I have known the case of men who have been very useful citizens.

2836. Even with regard to women, would it not be your experience, although never perhaps quite safe, they can live, after proper treatment, it may be, certainly for many months, possibly years, without any outbreak?—Not women, I think. Your experience is much larger than mine.

2837. At any rate with men you would feel that sometimes very bad cases may be cured?—I have known them.

2838. Would not a case be likely to arise where a woman might be able to allege the habitual drunkenness against her husband, but where it is conceivable the man might reform?—Yes, I could conceive a case. Each case would depend on its own circumstances, and what they considered was meant by the word "habitual."

2839. With regard to the equality of the sexes, there is a question which perhaps I ought to have asked other witnesses but did not. Have you considered the point with regard to that which affects the working classes especially, that there is a difference in the case of a woman, that if she falls she may bring into the family some other person's child?—I have that in mind, because I know cases in which it now exists. During the South African war, for example, a number of wives, I am sorry to say, had children that did not belong to their husbands to receive the husbands when they came back, and they are living together.

2840. I am afraid I know many cases. Would you not make some distinction between the case of the man and the case of the woman?—No, I would leave it to the sense of the wife. She would not be bound to apply for divorce.

2841. The first witness spoke of the attitude of the genuine working classes in this matter. Have you heard of any formulated public demand on the part of the Lancashire working men for these extended facilities for divorce?—No concerted public demand. I can only say that this Commission has been hailed with great satisfaction by the industrial classes of Lancashire, because they have recognised there may be some relief as the outcome.

2842. I am asking for genuine information. Have you read or heard of any expression of a sense of grievance on the part of the working classes?—Not through official organs or mouthpieces. They are mostly concerned with questions of wages, capital and labour.

2843. Have you ever seen it in the political journals?—I have in working class newspapers.

2844. Would it be unfair to say one reason why the Commission has been hailed with satisfaction would be because there is something, which naturally appeals to working men and others if they are not familiar with the subject, in the phrase "one law for the rich and another for the poor"?—Only in the sense that this absence of remedy is an illustration of that maxim which they think should be removed, and may be removed.

2845. They are more conscious of the force of the maxim than of the pressure of need or grievance?—No, it is not looked upon as a theoretical maxim. It is used as a term of reproach arising out of concrete instances.

2846. You would agree, would you not, speaking of the working classes in Lancashire and Yorkshire and the north generally, that they are singularly strong and faithful in their observation of marriage obligation?—Absolutely. I am convinced of that.

2847. You would say that the number of cases among the genuine working classes where divorce might become desired by either party would be comparatively small?—Small, and very sad.

2848. What would you say to the suggestion that if they were familiarised with the processes of divorce by it being, as it were, brought to their doors, the number of applications for divorce might increase?—They would increase, of course, but each application that was successful would remove a great evil.

2849. I should like your opinion upon the case of many men and women who at present, as I know they do with wonderfully good temper, make the best of things and rub along. If it was obvious without much trouble and very little expense a divorce could be arranged, divorces might be applied for which under existing circumstances would not be applied for, and without any great hardship?—No, I rather think the expense of the facility would act as some deterrent. It would act favourably on the question of morals.

2850. I only wanted your opinion?—That is my view,

2851. (*Mr. Burt.*) In giving the out-of-pocket expenses I suppose you did not include loss of wages?—I did just allude to it. I think I might say that the figures I gave did include it.

2852. Did they?—Yes, the actual figures of the taxed bills would not include it, but the out-of-pockets I gave would include the loss of wages in an undefended case.

2853. I think you mentioned that in some cases a few days and, perhaps, a week might be occupied, and, of course, wages to that extent might be lost through the necessity of coming to London?—Yes. That more applies to defended causes. Wages are lost, and sometimes situations are lost.

2854. I was going to put that to you, if there is some risk also of losing employment altogether through prolonged absence?—It has happened, because you cannot leave warps and that sort of thing at a minute's notice, with an uncertainty when you are coming back.

2855. You have known cases of that kind?—Certainly.

2856. (*Sir George White.*) I want to put a question to you following the answer given to his Grace just now, in which you say Lancashire and Yorkshire are noted for their faithful adhesion to the marriage tie?—I did not say "noted." I meant conspicuous.

2857. Take it they are conspicuous. Are you aware of the evidence of Sir John Macdonell, in which he gave the separation orders as varying from 42 per 100,000 in Lancashire to 15 in the agricultural counties, and as low as 2·38 in Dorset and Essex?—I do not accept that as an index of the morals of the parties. Those are separation orders that are granted, having nothing to do, in the majority of cases, with morals.

2858. The result is that man and wife are, at any rate, separated?—Yes.

2859. Kept apart?—Unnecessarily so.

2860. I take it that, on the whole of your evidence, you have not a high opinion of the courts of summary jurisdiction?—Not for this purpose.

2861. And therefore, as your evidence has naturally been coloured by that view, I should like to ask you your experience?—Pardon me, it is not coloured by that view. My evidence is affected by my own experiences. It is not "coloured" by that view.

2862. I do not mean any reflection upon your evidence by that remark, but simply take the case of separation orders being granted far too easily. That opinion must be partly based on your opinion of the court which gives these separation orders?—Yes.

2863. Therefore, I should like to know what your experience is, whether it is confined to your district, with regard to these courts of summary jurisdiction, or whether it extends to a number of different parts of England?—It is confined largely to my own division and adjoining divisions.

2864. Because there are certain statements you have made which I should say do not hold good in regard to courts of summary jurisdiction generally. For instance, the clerk is often not a lawyer?—That is frequently the case even at Manchester; but then they have a stipendiary at Manchester.

2865. And, secondly, the justices are guided by a junior assistant who knows nothing of the law?—That is absolutely true.

2866. That is true to your experience?—Unquestionably.

2867. The result being that certain decisions are given, such, for instance, with regard to cruelty. First of all, I will take the question of adultery. Your evidence goes to show that the magistrates deal with the case of adultery only where the wife applies for a separation order?—Yes. Adultery is a common element with which magistrates deal.

2868. You are aware they cannot give a separation on that ground?—Unquestionably, and I have urged it myself from time to time.

2869. Then, with regard to desertion after a fortnight?—Yes. These are actual experiences.

2870. I do not doubt that. What I want to get at is whether you wish the Commission to understand those are the general actions of courts of summary jurisdiction, because they are absolutely opposed to my own experience?—Each man judges from his own experience and that of his friends.

2871. It was not quite clear whether you considered cases that were sued *in formâ pauperis* might be carried through for a smaller sum than about 30*l.* Do we understand that was your experience?—Yes, from 25*l.* to 30*l.*, but this figure allows nothing for the country solicitor.

2872. You can give no idea, I suppose, to the Commission what your judgment is as to the number of cases that would come to the county courts if your suggestions were followed in your own district?—I think that is a very difficult thing for any man to give. You can only answer it in a general kind of way, that the cases would not be nearly so many as some people fear.

2873. Would you take away all jurisdiction from the present magistrate?—Except to grant maintenance orders.

2874. (*The Archbishop of York.*) And in cases of aggravated assault?—Yes.

2875. (*Sir George White.*) Where, as has been pointed out, it is very desirable to have children removed very promptly, is not that a case where the constant sittings of the magistrates would be very valuable if they kept their powers in regard to that matter?—I agree that the more frequent sitting would be an advantage, but the question is a delicate and difficult one, the custody of the children. I think it ought to go before a judge, or a lawyer, at any rate.

2876. You believe under the plan suggested in your evidence that the number of separation cases would be largely reduced, I take it?—If the jurisdiction were transferred to the county court judge, yes.

2877. Is it your opinion that would increase largely the number of divorce cases?—I do not quite follow that. Your question has reference to separation cases?

2878. Yes. Supposing the separation cases are fewer, would it not drive the parties into the Divorce Court, where they are not now driven?—The fewness would be accounted for by the frivolous grounds upon which they are based being perceived. You are quite right, if the county court was able to grant divorces some of those cases which now go to the magistrates for separation orders would go to the county court for divorces.

2879. You would still keep up judicial separations, although you believe under the new jurisdiction they would be greatly lessened?—I do.

2880. (*The Archbishop of York.*) Will you explain the statistics Sir George White mentioned? My question and your answer were based, not on the classes who usually apply for separation orders, but what we call the genuine working classes of Lancashire. It was among them you said the obligation of the marriage tie was conspicuously strong?—That is so. There is a big distinction between the working classes of Lancashire and Yorkshire and some other parts of the country.

2881. (*Sir George White.*) Do you find genuine working classes in Lancashire?—They are nearly all genuine in Lancashire.

2882. (*Mr. Rufus Isaacs.*) It comes to this, when you are dealing with respectable hard-working men, whether it is in Lancashire or anywhere else, there is a sanctity in the marriage tie?—I agree.

2883. They are anxious that all the children that are born should be children born of marriage?—Yes.

2884. And the lower you sink in morality amongst the working classes the less they care for the sanctity of marriage and the legitimacy of the children. That is what it amounts to?—Yes.

2885. You have both classes in Lancashire as well as everywhere else in the country?—Except we have an advanced system of education, and that has a tendency to level them up.

2886. I do not want to draw comparisons, but as I understand your evidence you take the view, speaking broadly, once there is a law of divorce the two things should follow, one that the sexes should be placed on an equality, and the other, so far as you can, rich and poor should be on an equality?—That is quite correct.

2887. Your view is that a woman should have the same right of freeing herself from a man who has misconducted himself as he has against her, but that she should have the right of exercising her judgment as to whether she should institute a suit or not?—I do.

2888. It does not follow that because you give her the right she must institute the suit?—Certainly not.

2889. That is left to her judgment?—Certainly.

2890. In many cases, from your experience, a woman would, presumably, not petition, although she had the right?—I would not say in many cases, but in some cases she would realise the special circumstances and forgive her husband.

2891. What it would amount to is this: in your experience, would she not be the best person, with the best knowledge of the special circumstances of her own life, to determine whether or not she wished to continue the marriage state with him?—Very much the best person, and the only proper person.

2892. There are relations which no person can know about except the wife and the husband?—That is so.

2893. I understand your view is that you want to give her the right to get her freedom if he has misbehaved and she wishes to take advantage of it?—Exactly.

2894. With reference to the separation orders, as I understand your view, the law is not well administered in this respect?—It is not administered on any recognised principles.

2895. I rather take it from the statements you have made, the inference is that there is a considerable amount of laxity in the administration of it?—I should say yes.

2896. By that, I mean that the law is extended to meet what apparently, as some courts think, are rather hard cases not provided for by the law?—Very hard cases make bad law in the police court.

2897. I gather that is your view?—Yes.

2898. Take an allegation of persistent cruelty: if that were to be decided without reference in any way to the heart of the tribunal, you have no doubt it would be decided one way, whereas in point of fact it is decided the other?—It depends who is on the Bench.

2899. That exactly answers the question I am putting. In your view, would it be better that such cases should be dealt with entirely by lawyers?—That is my view.

2900. You think that would help, at any rate, to meet that laxity in the application of legal principles?—It would certainly meet that point; it would have a tendency to introduce uniformity of the principles upon which the relief was granted.

2901. When speaking of courts of summary jurisdiction you were speaking of a number of courts in which there is no trained lawyer?—Yes, that is so.

2902. Your observations would not apply to courts in which there is a stipendiary magistrate?—Certainly not.

2903. You did not include in your courts of summary jurisdiction such lawyers, or rather such a tribunal as that of the stipendiary magistrate?—No. There are very few stipendiary magistrates. Even at Bolton there is no stipendiary magistrate.

2904. The expression "court of summary jurisdiction" would, unless explained, cover the cases of stipendiary magistrates?—I am obliged to you for pointing that out. I did not intend to include stipendiary magistrates.

2905. Do you see any real benefit in the granting of separation orders as distinguished from a divorce?—On grounds of cruelty I do. I am inclined to agree that if you except cases of clear cruelty, there does not seem to be very much advantage.

2906. In putting that question to you I should add this, that I mean provided that it has become quite clear to the tribunal, either through lapse of time or other circumstances, that it is impossible for a reconciliation to take place, or the parties to live together again?—I do not think I should be prepared to extend the grounds so far as that. It would be rather too much increasing the facilities for divorces.

2907. I am not sure?—Perhaps I do not follow.

2908. I do not think you follow what is in my mind. I daresay it is my fault. Supposing you have these separation orders granted, does it not follow, dealing with human nature as we find it, that if the parties still remain married, that both of them proceed then to make homes of an immoral character and to form an immoral union?—I should say in all cases of desertion that is the rule where desertion has been the ground, and I agree with you that where it has become clear that the husband is not going to return to his wife, then there is no advantage in a permanent separation order without a divorce.

2909. There might always be sufficient care taken to see it is a permanent separation if the magistrate or court is not satisfied that the desertion is permanent?—It is assumed care would be taken that there is no collusion in abstaining from recohabitation.

2910. Or that there is any hasty relief granted either?—Yes.

2211. In cases of that kind it is very difficult to determine whether or not the husband intends to return?—You must have regard to the period of time and the circumstances; the circumstances have to be inquired into. The period of time is a material element.

2912. Do you see any objection to a course of this character. Supposing the court is of opinion that there has been desertion and a separation order is made for the time being, and that, in the event of the husband not returning within a certain time the court becomes satisfied, it could grant a divorce?—I see an objection to limiting the time in advance, so that the husband would know when the decree would be obtainable.

2913. I am not suggesting a fixed time?—I am in favour of that view, to make it temporary.

2914. I do not follow your objection about a fixed time. Suppose the husband knows that a period of one year had been fixed, either by law or the magistrate, as the test, and he does not return, taking advantage of that period, is not that the best evidence that he does not intend to return?—It certainly would be evidence that he did not intend to return. Whether it would be the best evidence or not I am not prepared to say. I think it would be better he should not know the period of time the court was going to allow beforehand.

2915. At any rate it would afford valuable guidance as to whether he intended to return or not?—Yes.

2916. I do not understand the distinction you draw with reference to cruelty. You make an exception as to cruelty?—Yes, because there are numerous cases where not only the wife's health but her life is in jeopardy, and you must separate them quickly.

2917. Therefore you have to grant a separation order?—You have to grant a separation order, and therefore you cannot take away the power to grant separation orders altogether; you must keep it for cases of that nature. That is what I call real cruelty as distinct from the trivial.

2918. If it goes as far as that do you see any objection, if the woman desires it, to absolute freedom from the tie?—Do you mean on the ground of violence alone?

2919. On grounds of persistent cruelty, properly interpreted, I mean?—I am not prepared to grant a woman or a man divorce on the ground of persistent cruelty alone, however persistent.

2920. I do not follow your view upon that, because you would grant the separation order; according to you, separation orders should be granted?—Yes; for the protection of the wife. It is necessary.

2921. That is for the protection of the wife from violence?—Yes.

2922. Is it right, then, that she should continue to live in that state because of her husband's violence, without having the right to marry again?—Logically, you would expect me to agree, but, in practice, those bad cases are rare. I would not like to assent to the proposition that in cases of persistent cruelty alone there should be a divorce granted.

2923. You think, from your experience, that cases of that kind of real persistent cruelty would be rare?—Yes, I do. It is that word "persistent" that troubles the Benches.

2924. I am dealing with it in a sense which I think you are advocating its use, real cruelty which makes it impossible for her to live without being in constant terror of life or physical injury. That is what you mean?—Yes.

2925. It is still difficult for me to understand why, if you get cases of that serious kind, serious continuous cruelty, if they are living together, if you advocate an order being granted for separation, you object to the tie being dissolved?—On principle, I could not defend it; but I suppose on this point my evidence is not of great value, because it is my own personal disinclination to increase the grounds upon which divorce may be granted. I am speaking now on principle.

2926. It is difficult to understand why it is you are objecting. That is, on the broad principle, you do not want to make it too easy?—I do not want to increase the facilities in the sense of extending the grounds, except so far as I have already stated.

2927. Is that because you think it might lead a man to be persistently cruel if he wanted to force his wife to a divorce?—It might have a tendency to increase the real cruelty cases, because it would be to his interest to be cruel.

2928. It is not your view that adultery should be the only ground upon which a wife could get divorce, because you would only grant it for desertion if it is clear he has no intention of returning?—After the tribunal has satisfied itself he has no intention of returning, a decree of divorce, by all means.

2929. It is extended in cases of lunacy; you grant it to both?—Yes, or, as I said, in cases of incurable drunkenness.

2930. Which is very difficult to find?—Yes. One sees cases of it in practice; it is so bad for the children.

2931. I want to ask you a question about county court practice. Is there any distinction drawn in the county court between party and party and solicitor and client costs?—There is not; there is only one scale.

2932. That applies to both?—Except the registrar, where he has a discretion, will exercise it in favour of the bill when it is a solicitor and client taxation.

2933. That is the only way in which it operates?—That is the only way in which it operates in practice.

2934. (*Mr. Spender.*) There is one point as to cruelty and desertion. You would say that the cruelty cases tend to become desertion cases?—No, I do not think so. From my experience I should say that the desertion cases and the cruelty cases are quite separate; that is to say, the husband will desert his wife without any cruelty.

2935. That I follow; but are the cruel husbands the ones likely to desert their wives?—No, they are the ones likely to stop at home.

2936. They may combine even with this cruelty a real attachment to the wife, a real desire either that she may remain as a matter of convenience, or in some cases possibly by reason of attachment?—In some cases they have a real affection for their wives, only they get drunk.

2937. Therefore it is not solved by supposing that the husband who is cruel to his wife would be the husband who in most cases would desert his wife?—I do not think so.

2938. You would not give a wife relief from a husband, although she was permanently separated, on the ground of cruelty, although you would give her a relief if the desertion were the deliberate act of the husband?—For this reason: that I have known instances where the wife is separated on the ground of great violence from her husband, and they have come together again. He is not a deserter, he is not a cruel man, or may not be a cruel man necessarily.

2939. That is hardly persistent cruelty as you interpret it?—Yes, I think I should have to admit I was referring to cases of persistent cruelty as well as cases of isolated violence. I have known them come together again.

2940. I do not follow that distinction?—Perhaps I may trouble you to put the point to me again.

2941. The point I am thinking of is this, is the wife to be in a worse position if she has a husband who is a drunkard, who is so cruel that a court would grant a permanent separation order. She would be in a worse position if she desires to marry again than if the husband has merely deserted her. Is there any point in that distinction?—I should have to say, I think, that she must be put in a worse position if you mean by being put in a worse position that she cannot get a divorce.

2942. That she might want to marry again?—I should say she must not have a divorce for cruelty, whether it is persistent cruelty or isolated violence. The deserter never comes back after he has stayed away for a certain period, which is more or less an uncertainty. Once he has made up his mind to stop away he stops away for good; but the husband who has been cruel to his wife does sometimes repent and recognise what he has done, and they go back and live together again.

2943. You would hardly, as a matter of justice, expect or demand that the wife should wait on the chance of the deserter coming back?—No.

2944. You would not in the case of the deserter? Would you consider it necessary that she should wait on the chance of the persistent cruelty husband repenting?—As I have answered Mr. Isaacs, I cannot defend it logically, and, therefore, I do not consider my evidence on the point is of very great value.

2945. You would not assent to the doctrine that persistent cruelty was as much outside the violation of the marriage contract as a desertion might be?—I do not. I think desertion is far more detrimental to the marriage contract, because it renders it impossible.

2946. Than persistent cruelty?—I should say it is worse than persistent cruelty.

2947. The law acknowledges that in granting a separation order. Persistent cruelty might be incompatible with the fulfilment of the marriage contract?—The cases are very rare where persistent cruelty is incompatible with the performance of the marriage contract, because you see them after great violence sleep together the same night, and the same thing happening from time to time, and the woman probably in the family way when separated by the magistrates.

2948. You do not think that might be a great injustice to the woman?—I do not consider the cases of real serious cruelty such a material element for extending the grounds on which divorces may be granted.

2949. You do not think the cases are sufficiently numerous?—I do not, where the woman's life is in jeopardy or her health is seriously in jeopardy.

2950. You would grant a permanent separation on those grounds?—Yes. I should grant a separation which is permanent in the sense that the tribunal has ordered it to be permanent, but I have seen those permanent separations on the ground of cruelty terminated by the consent of the parties often.

2951. So far as the law is concerned the only difference between those two cases is that in the one, in the case of desertion, it allows a re-marriage, and in the case of cruelty it does not?—Yes.

2952. (*Chairman.*) Are these cases of cruelty chiefly the result of drink?—I should say yes.

2953. You draw a distinction between the position where there is a clear case of desertion and where there is a case of persistent cruelty?—I draw that distinction.

2954. Do you think cases of persistent cruelty would be met by the order being originally made for a limited time, six months or a year? Would not that give an increase of the chance to return?—I think it would be a great improvement on the permanent order.

2955. Suppose there is a case in which continued cruelty has gone on for years, and on the hearing of the case—not necessarily arising from drink but from character; not insanity, because that is another cause—the tribunal was satisfied that there was no prospect of safety in future life at all, at present the powers would be to grant an order for separation permanently. Other cases in which there was hope of return might be met by temporary orders?—Yes.

2956. Suppose the conclusion was, there is no prospect of this marriage being one in which they can live together, do you still think that a case in which separation alone should be granted, or in which divorce might be granted?—I should not like to admit the principle of granting divorces on grounds of cruelty alone. In the case you put of persons who live together for so many years in this state of cruelty, that seems to indicate they can continue to live together. One generally finds it lessening in course of years rather than increasing.

2957. I was putting a case in which it had increased. That was the difficulty I feel about your view at the moment?—I realise the difficulty quite well myself.

2958. May I put it in a concrete form? If there is a prospect of the return such as I see you have in your mind, it seems the order might be made to run for a time, and you say that would increase the prospect. That is reasonable. Suppose it is such as to justify a permanent order, I do not see why you differentiate that from desertion as a ground for divorce?—I am

afraid I cannot differentiate on any logical grounds at all. I am afraid this portion of my evidence is a sentimental objection to extending too much the grounds on which divorce may be granted.

2959. I wanted to see whether you appreciated the possibility of the temporary order meeting some of the cases, and you think it might?—I quite assent to that.

2960. To go back to the point of county courts for a moment, as against a judge travelling round, do you think that even with an increase of the staff from two, as at present, to three, so that one judge could travel, would that meet the difficulties of dealing with the whole country? Would he be able frequently to visit the places, according to your view, or not?—I do not think that would cure the difficulty if you increased them to four or five, because the difficulty is understanding the local conditions.

2961. Supposing he did understand the local conditions, do you think, practically, the moving round would be capable of dealing with all the different parts of the country?—I do not think it would work in practice.

2962. You are aware, although you did not mention it, that the county courts' jurisdiction is not limited merely to debts and small torts, but it has unlimited jurisdiction in bankruptcy?—I am aware of that.

2963. Is there bankruptcy jurisdiction in your district?—Not in my court. In the other four courts on my circuit it is so.

2964. They have full jurisdiction there?—Yes.

2965. You said you thought that divorce granted in proper cases might favourably act upon the question of morals?—Yes.

2966. I want to know the reason which led you to make that statement?—I was thinking of this. If the husband knew—I am speaking now of the working classes—if he gave his wife cause for a divorce, she would be able to get a divorce and permanent alimony out of him in some form, that would have a tendency to restrain him, because out of his wages he could not keep his own home going—which would be a separate establishment, and his wife's as well. I think, for that reason, it would have a deterrent effect and keep him straight.

(*Chairman.*) I think we ought to thank you for your very full and careful evidence.

Supplement to Mr. Pickstone's evidence.

IN THE HIGH COURT OF JUSTICE.
PROBATE, DIVORCE, AND ADMIRALTY DIVISION.
(DIVORCE.)

YOURSELF *v.* HEATON.
(UNDEFENDED CASE.)

Copy Bill of Costs.

Mrs. MARY ELIZABETH HEATON, 12, Amy Street, Middleton, to PICKSTONE AND JONES, Solicitors, Radcliffe (Lancs).

	Payments. £ s. d.	Charges. £ s. d.
1905, January 16th to December 12th:—		
To our charges for professional services rendered in connection with obtaining a dissolution of your marriage with your husband	—	21 0 0
Payments.		
1905, January 16th:—		
Commissioner's fee on swearing affidavit in support of petition	0 1 6	
March 18th:—		
Paid rails and expenses in effecting service of petition	1 14 6	
March 27th:—		
Commissioner's fee on swearing affidavit of service	0 2 6	
May 9th:—		
Middleton justices clerk's fee for copy. Summonses under Married Women's Act, 1895, served on your husband October 1897	0 10 6	
June 19th:—		
Paid witness Whitehead for loss of time and railway fares to London	3 0 0	
Paid your railway fares, &c. to London	1 14 8	
Managing clerk's rails and expenses to London to attend trial and prove service of petition	3 10 0	
Paid counsel's fee for opinion, with a view to suing *in formâ pauperis*, and fee on brief	5 10 0	
Paid counsel's fee for conference	1 6 0	
December 12th:—		
Paid London agent's charges	14 7 6	
	31 17 2	21 10 0
Payments	—	31 17 2
		£52 17 2

Credit—	£ s. d.
1905, June 3rd:—By cash of you	20 0 0
,, December 7th:—By cash of you	30 0 0
By allowance	2 17 2
	£52 17 2

THE BOROUGH OF MIDDLETON.

To Harry Heaton, of Amy Street, in the Borough of Middleton.

Information and complaint has been made this day by Mary Elizabeth Heaton, of 12, Amy Street, in the said borough, your wife, for that you have been guilty of persistent cruelty to her, your said wife, and by such cruelty have caused her to leave and live separately and apart from you.

And that she, your said wife, is desirous of applying for an Order against you under the Summary Jurisdiction (Married Women) Act, 1895.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction, sitting at the Court House, in the borough of Middleton aforesaid, on Thursday, the 14th day of October 1897, at eleven o'clock in the forenoon, to answer to the said information and complaint.

Dated the 11th day of October 1897.

BENJAMIN WALKER,
A justice of the peace for the borough Middleton.

I, the undersigned clerk to the justices for the borough of Middleton, do hereby certify that this is a true copy of the summons granted on the 11th day of October 1897.

Dated this eighth day May 1905.

Middleton. G. R. CLARK.

Messrs. PICKSTONE AND JONES, Solicitors, Radcliffe, to Messrs. T. D. JONES AND COMPANY, Solicitors, 167-8, Fleet Street, London, E.C.

HEATON AND HEATON.

AGENCY CHARGES.

Hilary Sittings.

	Payments. £	s.	d.	Charges. £	s.	d.
1905, January 20th:—						
Letter from you enclosing petition for divorce by your client, Mrs. M. E. Heaton, and marriage certificate, together with affidavit in support, and affidavit in support of application to sue *in formâ pauperis*, and original case, with counsel's opinion endorsed, and instructing us to apply for leave to sue	—			—		
Perusing case and opinion	0	6	8	0	3	4
Attending at registry with the papers when registrar was not satisfied with the affidavit as far as it dealt with the position and earnings of her husband, and that he desired your client to make inquiries as to what he was now doing and what his wages were	0	6	8	0	3	4
Writing you fully, reporting and returning affidavit and papers	—			—		
February 18th:—						
Letter from you enclosing supplementary affidavit of Mrs. Heaton, and papers	—			—		
Perusing supplementary affidavit	0	6	8	0	3	4
February 21st:—						
Attending registrar at Somerset House, when he stated that the affidavit disclosed that the husband's wages exceeded the limit within which leave to sue *in formâ pauperis* was granted, and he could not, therefore, make the order	0	6	8	0	3	4
Writing you reporting, and that we presumed Mrs. Heaton would now proceed in the usual way, as the fees saved by suing *in formâ pauperis* were only small	—			—		
February 28th:—						
Letter from you to proceed	—			—		
March 1st:—						
Writing you returning petition and affidavit herein as they were not in order, as no paragraph negativing proceedings had been inserted	—			—		
March 7th:—						
Letter from you returning petition duly amended and affidavit resworn	—			—		
Attending at registry, filing petition and affidavit	0	6	8	0	3	4
March 11th:—						
Paid stamp on petition	0	2	6	0	2	6
The like on affidavit	0	2	6	0	2	6
Instructions for citation against respondent	0	6	8	0	3	4
Citation and parchment and præcipi	0	7	6	0	5	0
Paid stamp	0	5	0	0	5	0
Copy for service	0	1	8	0	1	0
Attending, bespeaking copy for service	0	6	8	0	3	4
March 11th:—						
Paid for office copy (fos. 9)	0	4	6	0	4	6
Paid for certifying	0	2	6	0	2	6
Paid for sealing petition	0	5	0	0	5	0
Writing you with sealed petition and citation, and copy for service on respondent	—			—		
March 22nd:—						
Letter from you that respondent had been served, and suggesting our sending you draft joint affidavit of service of citation and of non-appearance	—			—		
Writing you acknowledging and enclosing draft affidavit of service, and suggesting you should make the affidavit of service separately	—			—		
Drawing affidavit	0	5	0	0	2	6
March 28th:—						
Letter from you returning affidavit of service and original citation exhibited thereto	—			—		
Attending returning citation into the registry and filing affidavit of service	0	6	8	0	3	4
Paid on returning citation	0	2	6	0	2	6
Paid filing affidavit	0	2	6	0	2	6
Writing you acknowledging, and that we had to-day bespoken registrar's certificate, and would set down case for trial in course of a few days	—			—		
Attending searching for appearance and found none	0	6	8	0	3	4
Paid search	0	1	0	0	1	0
Drawing and engrossing affidavit of search	0	5	0	0	3	0
Attending swearing same	0	6	8	0	3	4
Paid oath	0	1	6	0	1	6
Attending filing affidavit	0	6	8	0	3	4
Paid	0	2	6	0	2	6
Drawing request to set down cause	0	5	0	0	2	6
Attending for signature of registrar to certificate that cause fit to be set down, and leaving same	0	6	8	0	3	4
March 28th:—						
Afterwards attending obtaining certificate	0	6	8	0	3	4
March 30th:—						
Attending setting down cause	0	6	8	0	3	4
Paid fees thereon	3	2	6	3	2	6
Writing you reporting	—			—		
April 3rd:—						
Subpœna *ad test.* and attending to issue	0	6	8	0	3	4
Paid	0	5	0	0	5	0
Copy for service	0	1	0	0	0	8
Writing you therewith and thereon	—			—		
Attending searching list during sittings	0	13	4	0	6	8
Term fee (agency)	1	1	0	0	10	6
Easter Sittings.						
May 2nd:—						
Writing you we should be glad to receive brief herein, and that the case stood 142 in undefended list and 39 in to-day's list	—			—		

	Payments. £ s. d.	Charges. £ s. d.
Writing you further case would probably be in Thursday's or Friday's list, and desiring you to wire in the morning if you could not attend with witnesses this week to allow us to arrange to postpone hearing - -	—	—
May 3rd:—		
Telegram that you could not attend this week and letter confirming, and that your principal witness had disappeared - - - - -	—	—
Attending, arranging to postpone hearing over this week - - - - -	0 6 8	0 3 4
Writing you, reporting - -	—	—
May 6th:—		
Letter from you that assuming you could find your witness you would be ready to attend on the 15th or any subsequent date - -	—	—
Writing you that case had been placed in Monday's list, but would get it further postponed on Monday - - - - -	—	—
May 8th:—		
Attending clerk of the rules to further postpone trial when he stated that inasmuch as case was in list, we should have to apply by counsel to the judge - -	0 6 8	0 3 4
Instructions to counsel to apply - - - -	0 6 8	0 3 4
Attending him - - -	0 3 4	0 1 8
Paid fee to him and clerk -	1 3 6	1 3 6
May 9th:—		
Attending court when application made, and judge directed cause to go to the bottom of the undefended list - - - - - -	0 6 8	0 3 4
Writing you, reporting -	—	—
May 11th:—		
Letter from you desiring to know if we had any idea when case would be heard -	—	—
Writing you, we thought it would be reached on an early date, and to know if you wished to amend your petition, and if so, would be better to have case marked to stand out for these sittings - - -	—	—
May 15th:—		
Letter from you that no amendment would be necessary as the witness was discovered - - -	—	—
May 31st:—		
Writing you cause would be in Monday's list, and you should be prepared to attend with your witnesses - -	—	—
June 2nd:—		
Drawing and despatching you telegram that case not in Monday's list - - -	—	—
Paid - - - - - -	0 0 8	0 0 8
June 3rd:—		
Writing you confirming, and that case might probably be taken before end of week -	—	—
June 6th:—		
Letter from you requesting us to send you case, and counsel's opinion on the application for an order for leave to sue *in formâ pauperis* - - - -	—	—
Writing you enclosing you papers required, and that we expected case would be taken Thursday or Friday -	—	—
June 8th:—		
Writing you that case would not be taken till next sittings, and would probably be taken on the first day of that sittings - -	—	—
June 14th:—		
Writing you that the list would not be published until Friday or Saturday, and would advise you as soon as we saw the list -	—	—
June 16th:—		
Writing you case would be in list for Tuesday next -	—	—
June 19th:—		
Drawing and despatching you telegram that case in tomorrow's list, and to attend with witnesses - - -	—	—
Paid - - - - - -	0 0 10	0 0 10
Attending, searching cause list during sittings - -	0 13 4	0 6 8
Term fee - - - -	1 1 0	10 6
Trinity Sittings.		
June 20th:—		
Attending your representative Mr. Evans, and afterwards attending trial when decree nisi with costs granted against the respondent -	2 2 0	1 1 0
Costs of obtaining decree absolute - - - - -	2 3 10	1 8 0
	£21 14 2	14 7 6

YOURSELF AND YOUR HUSBAND.

(UNDEFENDED PAUPER CASE.)

Copy Bill of Costs.

Mrs. ALICE ANN HACKING to PICKSTONE AND JONES, Solicitors, Radcliffe (Lancs).

1897, January 25th to November 3rd:—	£ s. d.	£ s. d.
To our charges for professional services rendered between these dates in obtaining a dissolution of your marriage with Robert Hacking - - - -	—	10 10 0
Payments.		
1897, March:—		
Counsel's fee for opinion -	1 3 6	—
March 10th:—		
Paid commissioner's fee on swearing affidavit in support of application for order to sue *in formâ pauperis* and marking exhibit thereto -	0 2 6	—
May 7th:—		
Paid commissioner's fee on swearing affidavit in support of petition - - -	0 1 6	—

	£	s.	d.	£	s.	d.
May 15th:— Paid search and for certificate of marriage of petitioner and respondent at Somerset House	0	3	7	—		
May 25th:— Paid rails and expenses on journey to Heywood, serving citation, 6 miles	0	4	0	—		
June 4th:— Paid commissioner's fee on swearing affidavit of service of citation and marking exhibit	0	2	6	—		
July 12th:— Paid the clerk to the Heywood justices for certified copy Order in the case of Davis *v.* Hacking	0	5	0	—		
July 26th:— Paid commissioner's fee on swearing affidavit of petitioner in support of application to amend petition	0	1	6	—		
July 27th:— Paid the clerk to the Bury justices for certified copy Order of Separation in the case of Hacking *v.* Hacking	0	16	6	—		
September 3rd:— Paid rails and expenses on journey to Heywood serving amended petition on respondent, 6 miles	0	4	0	—		
September 4th:— Paid commissioner's fee swearing affidavit of service of amended petition	0	1	6	—		
October 18th:— Paid railway fare and expenses on journey to Heywood serving subpœna on witness, Dr. Pearson, 6 miles	0	4	0	—		
Paid witness, Dr. Pearson, for loss of time and railway fare and hotel and other expenses	2	11	0	—		
Paid petitioner's railway fare and hotel and other expenses	1	10	0	—		
Principal, rails and expenses to London to attend trial and prove service of citation	3	10	3	—		
Paid London agent's charges	16	2	8	—		
	27	4	0	10	10	0
Payments		-	-	27	4	0
				37	14	0
Credit—						
April 10th:— By cash on account		-	-	10	0	0
Balance written off (irrecoverable)		-		£27	14	0

HACKING *v.* HACKING.

SUMMARY OF LONDON AGENT'S CHARGES.

	£	s.	d.
Costs rendered (to August 6th, 1897) -	11	6	7
do. (to November 5th, 1897) -	4	6	1
do. (to February 1st, 1898) -	0	10	0
Total amount of London agent's charges against us - - - -	16	2	8

Between ALICE ANN HACKING - Petitioner

AND

ROBERT HACKING - - Respondent.

Petitioner's Costs of obtaining Divorce under Order to sue in formâ pauperis to be taxed and paid by the Respondent.

	Payments. £	s.	d.
1. 1897, March 10th:— Paid commissioner's fee on swearing affidavit in support of application for Order to sue *in formâ pauperis* and marking exhibit thereto	0	2	6
2. May 7th:— Paid commissioner fee on swearing affidavit in support of petition	0	1	6
3. May 15th:— Paid search and for certificate of marriage of petitioner and respondent at Somerset House	0	3	7
4. May 25th:— Paid rails and expenses on journey to Heywood serving citation, 6 miles	0	4	0
5. June 4th:— Paid commissioner's fee on swearing affidavit of service of citation and marking exhibit	0	2	6
6. July 12th:— Paid the clerk to the Heywood justices for certified copy Order in the case of Davis *v.* Hacking	0	5	0
7. July 26th:— Paid commissioner's fee on swearing affidavit of petitioner in support of application to amend petition	0	1	6
8. July 27th:— Paid the clerk to the Bury justices for certified copy Order of Separation in the case of Hacking *v.* Hacking	0	16	6
9. September 3rd:— Paid rails and expenses on journey to Heywood serving amended petition on respondent, 6 miles	0	4	0
10. September 4th:— Paid commissioner's fee swearing affidavit of service of amended petition	0	1	6
11. October 18th:— Paid railway fare and expenses on journey to Heywood serving subpœna on witness, Dr. Pearson, 6 miles	0	4	0
12. Paid witness, Dr. Pearson, for loss of time and railway fare and hotel and other expenses	2	11	0
13. Paid petitioner's railway fare and hotel and other expenses	1	10	0
14. Special allowance to cover incidental expenses	5	5	0
	11	12	7
Taxed off -	0	1	6
Taxed and allowed at - - -	11	11	1

December 8th, 1897.

Mr. FREDERICK WALTER DENDY called and examined.

2967. (*Chairman.*) I think you are the registrar of the county court at Newcastle-upon-Tyne?—I am.

2968. And have been registrar for 11 years?—That is so.

2969. Were you previously in practice as a solicitor?—I was, for 28 years.

2970. You have retired from that now?—Yes.

2971. I will go to the end of your proof for a moment, to an important matter. You say you have no opinion to offer on the question of separation orders, on the question of publication of divorce reports, and on the question of amendment in the law?—I only speak on the first subject, subject to this reservation, that in advocating or being of opinion that the divorce jurisdiction should be granted to the county courts, I do not include the jurisdiction now exercised by magistrates.

2972. I rather meant the effect of the orders?—I do not wish to express any opinion on any of those three points.

2973. Your evidence is confirmed, as far as I can follow the proof, to dealing with the possibility of county courts acting as the proper court?—That is so.

2974. Are you in favour of a limited jurisdiction being given to all the county courts, or to selected county courts?—Only to selected county courts.

2975. Your district is Newcastle-upon-Tyne?—My circuit is Northumberland. My own district is Newcastle-upon-Tyne.

2976. Will you tell me, for instance in Northumberland, what your selected county courts would be?—My county, if I may say so, is the opposite in circumstances to that of Mr. Pickstone. In Lancashire there are four or five large towns: in Northumberland there is one large town, Newcastle-upon-Tyne. That would be the only court that would exercise jurisdiction if the jurisdiction was limited, as I suggest it should be, to courts which have bankruptcy and company jurisdiction and where there are district registrars of the High Court.

2977. Would that leave the proceedings until the trial to be conducted in any branch of the county court?—No.

2978. Wholly conducted at Newcastle, you would have it?—Yes.

2979. Would not that present difficulties much similar to those of coming to London, except that it would be an increased distance?—It would be a question of 30 miles instead of 300: that is the difference.

2980. Would not that involve the necessity for the litigant either going himself to Newcastle to begin his suit, or employing solicitors to do it?—I should like to explain my reason for saying so. There are districts or rather circuit towns in Northumberland, where there is not only no solicitor, but there is no clerkly man, and a tradesman enters the plaints for the registrar, who is in Newcastle-on-Tyne.

2981. Where does he enter them?—In the place. He is incapable of distinguishing. He has difficulty in distinguishing between a default summons and an ordinary summons, and would never be able to distinguish between a petition and a citation, for example.

2982. Supposing they were abolished, and the petition stated he wanted a divorce on the ground of So-and-so, is there any difficulty in understanding that?—He could give the applicant no help whatever.

2983. When you would give access to a court, you think it should be a county court?—Yes.

2984. And not the High Court?—Yes. I do not wish to take up your time, but may I say that the result of trying cases in these outlying courts in Northumberland, where there is one town that is big and the others are small, is this, that as against the small expense of bringing the witnesses into Newcastle there is, by trying the biggish cases in these small towns, the expense of solicitors going out, of counsel going out, of the judge going out, and the registrar himself going out, and the expense both to the litigant and to the public is greater in these modern days of cheap travel, than would be the expense of going to a larger centre.

2985. Why does that differentiate Newcastle from London?—Because a working man can afford 2*s.* 6*d.* to get to Newcastle, and he cannot afford 1*l.* to get to London, multiplied by the witnesses.

2986. And longer time?—Yes.

2987. With regard to the assize courts as an alternative, what do you say as to them?—They would not afford an adequate remedy. Do you wish me to give my reasons for that?

2988. If you please?—First, because the procedure would be too expensive, upon which I have some figures: secondly, because the local officials responsible for the proceedings at the trial would not have the benefit of the guidance and support of the judge in dealing with interlocutory proceedings, such proceedings as generally arise after the action has begun and before it becomes ripe for hearing.

2989. They being in the country would not have an opportunity of speaking to the judge?—That is so. I am both a district registrar of the High Court and registrar of the county court. It is immaterial to me, except both would throw more work on me; whichever of those tribunals takes it, I should do the work. If I did it *quâ* district registrar of the High Court, for instance, if I granted access to children or removed children from the custody of one parent and gave it to the other, or if I awarded alimony *pendente lite*—if I did that as district registrar of the High Court, I should have no judge behind me. If I did it as registrar of the Newcastle County Court, I should have the valuable backing up and advice of my superior officer.

2990. In one case you would have an accessible judge, and in another you would not?—Practically no judge at all. That is my experience in the district registries.

2991. Your third reason is, because you think the judge before whom the interlocutory proceedings come should ultimately try the case?—I do not put that very strongly: there are different opinions as to that.

2992. That would be met by the suggestion that one judge should do the whole of this business, one High Court judge?—That would be impossible.

2993. Will you say why?—You mean the suggestion that there should be an itinerant judge?

2994. Yes?—I do not think an itinerant judge could keep in touch with the officials all over the country, either directly or through the mediation of a registrar in London. The judge's view, and the public's view, and the counsel's view of an action at law, or of a suit of any sort, is that the whole thing is the day of the trial, but the whole work, from an official point of view, is done before the day of trial, and that requires more guidance than one judge travelling over the country could give. Moreover, the thing has been tried; they tried it with the Wreck Commissioner in the cases of wreck inquiries. I do not speak beyond my last, because I acted for the Board of Trade in wreck inquiries when I was in practice. The same thing took place which takes place with judges and assizes. They want so much—I use the word because I do not know of any better term—paraphernalia, going round, that the public expense is very great, and the only case I know of where there was a new tribunal of that sort proved so unsatisfactory that it was given up, and wreck inquiries were remitted to local tribunals.

2995. You mean the expense of sending round a High Court official is so great?—Yes, and all his staff.

2996. You have not had much experience in divorce actions?—Nothing to speak of. I was 28 years in practice, but I did nothing to speak of in divorce actions.

2997. You have had a great deal of experience of the comparative cost of assize cases and county court cases?—I have had a great experience of assize actions, and I have taken out the figures of the taxations of assize actions which I have taxed as district registrar of the High Court, and the figures of the upper

jurisdiction of the county court which I have taxed during the time that extended jurisdiction has been in operation.

2998. The extended jurisdiction would be in cases over 50*l.*?—Cases between 50*l.* and 100*l.*

2999. Will you just give us those figures? I do not know whether they lead to definite conclusions?—In the 11 years in which I have acted as district registrar of the High Court I have taxed the bill of costs of the successful party in 77 assize actions, which were Newcastle District Registry cases tried either at Newcastle-on-Tyne or at some adjacent assize town. The average amount of the costs as taxed in each of these 77 assize actions has been 108*l.* 5*s.* 10*d.*, roughly speaking 100*l.* The highest bill as taxed by me was 320*l.* 7*s.* 10*d.*, and the lowest was 36*l.* 9*s.* 8*d.* During the five years that have elapsed since the County Courts Act of 1903, extending the jurisdiction of the county court to cases over 50*l.*, has been in operation, I have as registrar at the county court taxed the costs of the successful party in 47 actions tried at Newcastle under the extended jurisdiction. The average costs of those actions was 30*l.*, as against 100*l.* The highest of those bills was 106*l.* as against 326*l.*, and the lowest was 8*l.* 14*s.* 6*d.* as against 36*l.* 9*s.* 8*d.* I would like to point out the curious result, that not only is the average just under one-third, but the highest is just under one-third, and the lowest is just under one-third, and therefore, I think, you may say, from my experience in that particular district, the cost of an extended jurisdiction action in the county court is just under one-third of an assize action trial.

3000. Were those assize actions all of larger calibre, larger matters which would require more expense?—No. On the whole they were larger, in point of fact. I do not think you can estimate the size of an action entirely by the amount claimed, and, moreover, a good many of them were only tried at the assizes, because slander and libel are excluded from the jurisdiction of the county court.

3001. You have read the recommendation of the Lord Chancellor's Committee of last year?—Yes.

3002. You agree with that except on the question of the right of audience?—That is so.

3003. You would reserve that to the solicitor or the barrister, as the case may be, as at present?—I would.

3004. You think the operation of that restriction of the bar would be a hardship?—I think it would be a hardship on the poorest public, and I think it would be introducing a new exception which would be very undesirable in the general practice of the county court.

3005. They can have a barrister if they want one, and you would leave them to do that still?—Yes. What happens in my court is that there is no friction between barristers and solicitors. The solicitor generally briefs a barrister unless the client cannot afford it.

3006. You are in favour of solicitors having the right to be heard?—Yes.

3007. Partly because it would put too much expense upon the poor if they were compelled to employ counsel?—It would be an avoidance of justice in the poorest cases.

3008. And in cases where they want to have it they could still have it?—Yes.

3009. It is an advantage to the solicitor if he has counsel, both in his costs and as regards legal responsibility?—That is so. Also it is a pity to introduce a new exception into a county court that is already too full of exceptions.

3010. The work of the courts has been increased by the Act of 1903, which gives extended jurisdiction beyond 50*l.* and up to 100*l.*?—It has been increased, but not very materially.

3011. Your total for those cases is 62?—Yes.

3012. The highest figure you have is for 1908, which is 17, the 62 being the total for the five years from 1905 to 1909?—Yes. Part of the increase that is shown is illusory; that is to say, that people now claim in tort 100*l.* where they formerly claimed 50*l.*, and therefore the increase in the actual number of cases is less to that extent.

3013. We will not trouble about that. Workmen's compensation cases have increased?—To a very much greater extent. I should put it roughly, without having calculated on statistics, whilst the County Courts Act of 1903 has increased the judge's work, say, 10 per cent., and the office work 5 per cent. at the outside, the Workmen's Compensation Act has increased the judge's work 30 per cent., and the registrar's and office work 30 per cent. It is a much more serious thing, the Workmen's Compensation Act, than the County Courts Extension Act.

3014. There is a great deal of clerical work in connection with it?—Both clerical and judicial work.

3015. With regard to this suggested augmentation of the work, it would not be so much the judicial as the registrar and clerical staffs which would have to be assisted?—That is so. I am assuming you are not going to throw all the separation orders upon the court.

3016. I said "divorce," I think?—I meant "divorce," but even so where the courts are getting undermanned it is not so much in judicial as in clerical strength, although I admit the judges have more to do; but you know the Treasury is always very sparing, and the clerical staff has now responsibilities and duties which are not adequately paid for, and it is there that the relief must be given if responsible work is added to their duties.

3017. I believe you think that consequences will apply, whether done by county court registrars or district registrars, because the two offices of district registrar and county court registrar are always held together by one person?—That is so.

3018. At places where there is a district registry?—Those are the only places where I advocate that there should be either interlocutory proceedings or actions in county courts.

3019. Your proof is really directed to this point: if you add to the work of the court, you may have to add to its staff and its judicial strength?—Yes.

3020. I do not think your proof goes beyond what I have been asking?—Yes; I have added, simply so that you may see it, a tabular statement at the end of my printed proof.

3021. It is a specimen of a county court registrar's daily work?—Yes. That was Monday; it is not a big day. That is a light day's work.

(*Mr. Spender.*) You speak of a limited jurisdiction for selected county courts. Could you give us any idea of the number of county courts which would be available for the purpose? I think there are 55, are there not?

(*Judge Tindal Atkinson.*) There are 52 in the country, but there would be the metropolitan court beyond.

(*Witness.*) I would not introduce new anomalies. I would give jurisdiction to those courts on which bankruptcy and company winding-up jurisdiction has already been conferred. That is a limited number of courts which are set out in any statistics, Whitaker's Almanac, or any book on county courts.

3022. (*Mr. Spender.*) I am very ignorant about this?—There would be one or two in a county. In a district like Lancashire there may be a dozen in a county, but, roughly speaking, one or two in a county.

3023. You speak also of a limited jurisdiction. What is in your mind?—The recommendation of the last Commission, that it should be limited to petitioners of small means.

3024. Would you suggest any appeal from it?—Yes.

3025. And the King's Proctor working with it?—As to the King's Proctor, I have a suggestion to make which I have not given very great consideration to, but I put it forth for what it is worth, that that is Crown business, and that if you take it to the county courts you should intimate the date of sitting for divorce cases to the chief constable of the borough or county, and that his sergeant should attend. These people are in touch with the police, and the police with them, and if inquiries are made by the King's Proctor, my impression is that at the present time they are made through the police. I do not know—I have that impression, and

that is my suggestion, that with regard to the representing of the King's Proctor that notice should be given by the county court officials to the chief constable of the district in which the county court is, of the day upon which any divorce case will be heard, and that it should then be the duty of the chief constable to send some reliable official of his to watch the cases and to report, if necessary, to the judge or anyone you put it upon, where any facts are known to the police.

3026. Those cases, I assume, in your mind, would go to the High Court after a decree had been given?—The decree absolute could easily be done in the High Court. Parties do not have to come up. You can get it done for a pound or two in the High Court.

3027. You would keep the decree nisi for the county courts, the selected ones?—That is so.

3028. And give your chief constable, to whom I suppose would be delegated the functions of the King's Proctor locally, power of intervening, and, supposing he intervened, those cases would go to the High Court?—I would not have him intervene in court in the sense of appearing and addressing the court, but he should be there and make his report to the King's Proctor in any case he thought fit.

3029. You would be in favour of the case going to the High Court if he took action?—Yes. As you have referred to selected courts, I should not like a wrong impression to go out as to the courts in my circuit which are not selected. Whilst there are these small courts to which I have referred, there are other large and important courts at Gateshead, North Shields, Blyth, and Tynemouth, but I am authorised, I think, by the registrars of those courts, at least by the registrar of Gateshead, which is the largest of them all, to say that he concurs entirely in the view that the proceedings in divorce cases should be limited to the chief court of the district, on many grounds, which he sets forth in a proof which I have here.

3030. The appeals of both of the parties would remain as now?—I should make the appeals the same as county court appeals at the present day.

3031. Only they would go to the matrimonial division?—Except they would go to the matrimonial division.

3032. A further point which seems to be rather important to ascertain is the jurisdiction of your courts. You would leave the separation orders to the present jurisdiction?—I would in Newcastle, where the magistrates are advised by Mr. Roberts, whom you are going to have before you, I believe. The work is carefully done, he tells me. I put it shortly, because you will have his evidence, that if the separation business were transferred to our county courts, we should have to sit five hours every 65 days, and we could not do that. That is what he told me. I mention this, so that you may ask him when he comes, but the mass of the magistrates separation business should not come to the county court; it is a police matter, a matter of cruelty that requires day-to-day sittings, such as are given in police courts, and even the delay of a month between the sittings in the county court would make the county courts unsuitable as compared with police courts for the great mass of separation cases.

3033. You do not see any possible difficulty in having two separate jurisdictions to give one separation?—There would be no alteration of the present law. What the county court would take would be the Divorce Court jurisdiction; I see no insuperable difficulty in those two running together. I would simply take out of the Divorce Court the cases which would be tried in London if the parties had the means, and which are not tried at all, and that is all I would take to the county court. I would leave the separation orders as they stand, to be dealt with by the magistrates. About the practice of those separation orders I know nothing.

3034. In the analogous proceeding for the well-to-do classes the Divorce Court takes both the separation business and the divorce business, and I suppose there is a certain advantage in doing that, because both are under the cognisance of the same court and rules. The difference in the two cases is so material, it would be impossible for one court to take both?—A county court sitting monthly in different places in the country could not cope with the separation business in a centre of the size of Newcastle-on-Tyne.

3035. Is that objection simply founded on the fact that the court is not sufficiently strongly manned at present, or do you think it is unsuitable by its nature?—I think it is unsuitable by its nature, in that respect. It is not a continuous-sitting court, and I think it is unsuitable by its nature, because the separation cases are police cases, and not cases of divorce between poor but respectable people.

3036. (*Mr. Rufus Isaacs.*) You said this would not be for the county court, but should be dealt with by the police court. It would be necessary, if the county court does have divorce jurisdiction, that it should try some of these cases. Have you considered that?—You would have to draw a line of some sort, I admit. I admit the two would run into each other in a way, but I would preserve practically the legitimate civil matrimonial disputes for the one, and the questions of cruelty, for example, and questions that required immediate solving, to the other.

3037. Your objection in the main would be to throwing a great deal more work on to the county court?—It would be altering its nature from a monthly court to a daily court.

3038. With reference to the desirability of giving access to the courts to poorer persons, there is no doubt it is of very great advantage to a poor man to know the day on which his case is likely to be tried?—Undoubtedly.

3039. He could make his arrangements, and would lose, it may be, one day, but that is all?—That is so.

3040. That the county courts do give?—That is so.

3041. That would be a difficulty of a very serious character in reference to a judge of assize?—Very.

3042. It would be uncertain how long the cases would take him at the various places to which he had to travel?—I have had to wait a week for my case at Newcastle, at assizes, when I was in practice.

3043. You are likely to get cases which take longer time than was expected?—You always do get some cases that take a longer time, against others that take a shorter time.

3044. In undefended cases, there would be no difficulty in fixing a morning upon which parties could absolutely depend on the case being heard?—None whatever. Business is classed for certain days already in my county court: certain days bankruptcy, certain days workmen's compensation: certain days judgment summonses; and a day, or a portion of a day, would be allocated to divorce business.

3045. Do you know any case in which the King's Proctor has asked you, as registrar of the county court, or district registrar of the High Court, to supply information or make inquiries for him?—He has never done so.

3046. Do you know any such case amongst your colleagues?—No.

3047. It is not the practice for the King's Proctor to apply to the registrar of the county court?—I understand he applies to the police. It is not his practice to apply to the registrar of the county court.

3048. Your view with reference to the chief constable is, that through the police information should be obtained and supplied, but that no action should be taken by him, but that that should be left to the King's Proctor, as now?—That is so.

3049. He should get the statements of witnesses, if he can?—The King's Proctor would investigate the information, and if he found there was anything wrong, he would give notice to the registrar of the county court that he was not to send the case up to be made absolute, and the county court registrar would then send out the necessary notices to the parties, and they would have to initiate proceedings to get it made absolute, or would have to drop it altogether.

3050. If no steps were taken, there would be no expense, because decrees are made absolute without the parties being there, or the necessity for anybody applying?—You must apply formally; there must be

somebody there to represent the parties; you cannot have it absolutely without expense.

3051. If notice is given without objection, by the parties, there is no need to appear?—That is a matter of divorce practice, but the Chairman will tell you somebody must attend and ask for it. I do not know myself.

3052. The decree would be made absolute if nobody appears in the ordinary course?—Very well.

3053. (*Sir George White.*) Do you think any considerable number of cases which are now brought up for separation would be transferred to the divorce court if facilities were made easier on the line you suggest?—Not a great proportion. They would be a different class of case.

3054. (*The Archbishop of York.*) I did not hear most of your evidence. Do I understand you are satisfied with the administration of the Act of 1895 by the present magistrates?—I believe that it is well administered in the Newcastle court, and I have heard no complaints of its administration there, but I speak under all reserve, because it is not a thing which, like the last witness, I have any knowledge of myself.

3055. Have you a stipendiary at Newcastle?—No, but we have a very good bench advised by Mr. Roberts, perhaps it does not convey much to your Grace, but Mr. Roberts is the editor of Stone's Justices Manual, which is the leading work upon magistrates law, and he is perhaps above the average as adviser of the Newcastle bench.

3056. I remember the book well.

3057. (*Judge Tindal Atkinson.*) In reference to th advocates coming to court, have you a local bar at Newcastle?—We have a good local common law bar at Newcastle, besides a small conveyancing bar: we have a common law bar of about six members.

3058. Would there be any difficulty in these poor cases in getting counsel to attend for one guinea, supposing one man with a list of ten or six cases?—In undefended cases I think they would attend for one guinea.

3059. It would be possible that one man might get three or four cases?—That is so.

3060. With reference to solicitor advocates attending, I suppose the judge knows his solicitor advocates?—Yes.

3061. And knows what advocate he can trust and what advocate he cannot trust?—That is so.

3062. With reference to the commencing of the proceeding, in your district I suppose every town has a registrar, a solicitor?—Every town has a registrar, but in three or four of the smaller towns there is no solicitor residing in the town or its neighbourhood, and therefore the registrar is a Newcastle solicitor, or Alnwick solicitor, a solicitor residing outside that county court town district.

3063. Has he no office in these towns?—Yes.

3064. Does he not keep a clerk there?—They are so small it does not pay him to keep a clerk there.

3065. Do you know much about the rest of the country? Is it not a fact that in most of the towns the registrar has a branch office and a small staff of clerks?—Yes, but all those places are far more thickly populated than the hill districts of Northumberland.

2066. I think you will agree with me your circuit must be rather an exception in this respect?—Yes.

3067. Because it may be important to these poor people who have to commence their proceedings, that they should go to the nearest registrar's office?—Yes.

3068. Because some of them will have to travel many miles to get to Newcastle?—The very poor people, at least the people who can barely scrape together the necessary 10*l.* to file their bankruptcy petitions, find no difficulty in filing them in Newcastle.

3069. As to the town to be settled, does it not strike you it would be as well to leave it to the judge to fix his own town in a different circuit to try these divorce cases?—It might be so.

3070. He would be familiar with the district and the means of access to the different towns?—And the facilities for the interlocutory work. That is an important part judges very often overlook.

3071. Would you leave it to each judge to fix his own town at his own discretion?—I have no objection to that.

3072. Supposing that the separation order were limited in the first instance to a certain period of time, would it overwhelm the county court with work, supposing those orders which required confirmation were taken to the county court. Take a separation order for six months?—It is beyond my province, but I do not see the use of limiting a separation order to a fixed time, because the parties can come together again whenever they choose; therefore, there is no object in limiting them to a fixed time, that I can see.

3073. Might it not induce them to come together again if the husband knew that there would probably be a permanent order on the application from the wife at the county court?—That might be so.

3074. As regards the staff and clerical assistance, that would be met by the increased fees obtained by the court in the divorce cases?—No, not in cases where the registrar is paid by a salary. I am paid a fixed salary. When the Workmen's Compensation Act came into force or at least the last Workmen's Compensation Act, some fees were provided for registrars for the additional work. The Treasury took those fees, but they did not raise my salary, and they did not give me any further assistance.

3075. I am referring to this. The Treasury would get the fees on the divorce cases?—They would, but my impression is that the fee would not be in proportion to the additional responsibility of the work that would be done.

3076. The Treasury would not be in a position for the increased fee to give increased clerical assistance?—Not to the necessary extent.

3077. You think not?—No.

3078. Do you agree that there are many cases in which a woman is entitled to a divorce against a man who is guilty of the grossest immorality and the most infamous conduct, and it is degrading to his children to be under his charge, and there is no power to get them removed from his custody by a county court judge? Is not that the fact?—Yes.

3079. Supposing you could initiate divorce proceedings in a county court, then an immediate application could be made to the judge for the removal of those children from that contaminating influence?—That is so.

3080. Does not that speak very strongly for the necessity of some such jurisdiction being conferred upon the county court?—That was my first, or nearly my first, argument in favour of the county court as against assizes, that you would not only have to deal with the case upon the day of hearing, but have to provide for the custody of the children in many cases as a preliminary step, or an interlocutory proceeding after the proceedings are initiated, and I agree with you that that is a strong argument in favour of the county court being the right tribunal.

3081. A judge, without any expense to the parties, is always accessible to them?—He is not daily accessible. He is accessible to them on notice. He has his other courts.

3082. (*Mr. Brierley.*) Do I understand that what you are in favour of is that the courts of summary jurisdiction and the county courts should exercise a concurrent jurisdiction in these matters?—No, not strictly so.

3083. In this way: if the complainant desires the relief which the court of summary jurisdiction can grant her, she should go there. If she desires divorce and can substantiate grounds to entitle her to it, she should go to the county court?—That is so.

3084. The two courts should remain side by side?—Yes, that is so.

3085. You think that is really necessary because there is a certain class of cases which county courts could not deal with readily?—That is my opinion.

3086 You are not quite accurate when you say the offices of district registrar and county court registrar are always held by the same person?—I should have said "generally," no doubt.

3087. In Liverpool, Manchester, and Preston I think you will find they are not?—Liverpool and Manchester are exceptional.

3088. (*Judge Tindal Atkinson.*) Ipswich is an exception?—I do not think I said it was always so.

3089. (*Mr. Brierley.*) I think you did?—Then I was incorrect.

3090. It is only to get the matter accurate.

3091. (*Chairman.*) Judge Tindal Atkinson asked you about the knowledge the county court judges have of their solicitor advocates?—Yes.

3092. Is that an important matter?—Yes.

3093. Will you explain what you mean by it?—I mean to say this, that to some extent even, if I may be allowed to say so, amongst counsel, and perhaps to a rather larger extent amongst solicitors, there is a difference in the way of their putting things, and of the extent to which the court trusts them.

3094. Would the county court judge, in your view, be in a better position to deal with matters from that point of view, if he knew his district and the men, than the judge who it was suggested might go round the whole of England?—Certainly. The judge on the spot knows who is telling him a fact or suggesting a line of action much better than a stranger will do.

3095. Do you regard that as of sufficient importance to differentiate, if that was the only differentiation, between the county court judge and the High Court judge?—No, not in itself; but I think it is a strong element. Arising out of that, if I may, I would say there was a suggestion made by Mr. Justice Bargrave Deane that the registrars of probate courts could take these proceedings in probate centres. I do not know whether that is seriously entertained, but I should like to point out, although it is possibly known to the Commission, that those registrars under the Probate Act of 1858 need only be clerks of five years' standing in the general probate registry. They are men who are not qualified, and they are men who have, when they are promoted to these district registrarships, an exceedingly easy berth and exceedingly limited opportunities of knowing the public that resides around them, and, if you will allow me to say so, they would be the most unfit persons to have the conduct of local interlocutory proceedings in divorce cases.

3096. You mean they only know about probate matters, and have no other experience?—They have no other experience, and do not come in contact with the surrounding population.

Mr. WILLIAM GREGSON called and examined.

3097. (*Chairman.*) You are a solicitor?—Yes, I am.

3098. You have been for 28 years registrar of the county court of Essex, held at Southend?—Yes.

3099. There is a lot of business done there. I see the number of summonses issued for 1909 is 3,238, and that the court sat on 35 days?—Yes.

3100. You have only ordinary jurisdiction, and not either bankruptcy winding-up, or Admiralty?—The court has only ordinary jurisdiction.

3101. Have you considered the question of conferring on county courts jurisdiction in matrimonial causes having regard to the practicability of working the matter in the county court?—Yes, I have.

3102. Will you tell us your view?—With the exception of the small qualification which I have mentioned in the proof I have sent in, I see no objection to conferring divorce jurisdiction upon county courts, the exception being that I would except some of the very small courts, but I would willingly leave it to the discretion of the judge of the circuit.

3103. So that he could select the courts?—I would leave it to the judge to select the courts he thought it desirable the jurisdiction should be exercised in.

3104. Would you permit his going to the small ones to try the causes at his discretion?—That might be so. I do not know that there is much in that. In the county in which I live there are many courts, scattered all over the county; and I think it would be preferable that the hearing of these cases should be in the court in which the proceedings are entered.

3105. Some of these courts might be a considerable distance for the parties?—It might be so, but that depends upon the discretion which the judge exercises in fixing the courts.

3106. In which courts he would allow it to be done?—Yes.

3107. The experience of the registrars and staff at the larger courts is naturally greater than at the smaller courts?—It is manifest it must be so.

3108. A similar principle of selection was applied by section 5 of the County Courts Act, 1903, which allowed the extended jurisdiction?—That is so. It is left to the judge.

3109. To select?—Yes.

3110. In your view could the business work of these causes be properly transacted in the county court offices?—I do not see any reason why it could not be properly transacted.

3111. Would your bailiffs be of use in these matters?—I think so. We have good bailiffs, men of thoroughly good character, who could be relied upon for the information they give.

3112. To find out all about people?—Yes.

3113. The extension of the jurisdiction, if given to the county court, you would confine to persons of limited means?—I think so. I think it was never intended that the more wealthy classes should make use of county courts, or perhaps a secluded county court, to bring their cases in, and I would limit it to those of limited means.

3114. You have not suggested a limit. Assuming one was fixed upon, would you permit of the judge in your view having power to grant the right to sue in cases beyond the limit?—My view was, that I would give unlimited right without leave to those under a certain limited income. There should be another stratum of society in which it should be for the judge to say whether the case should go to the county court or not.

3115. Have you thought it out sufficiently to make a suggestion as to what the fixed limit should be?—So far as my own neighbourhood is concerned, I am inclined to say about 2*l.* a week for the lower limit.

3116. For the joint income or the income of one?—There is not much in my neighbourhood of joint income. It is principally the husband's income.

3117. Do you consider it would be desirable in the county court that periodical days and times should be fixed for the hearing?—Yes, I think it is desirable.

3118. To deal with interlocutory matters, the custody of children and so on?—I think so, and for the hearing as well of the cases.

3119. Do you think that could be as well done by a judge of the High Court moving round, as by a county court judge?—It appears to me to be impracticable for it to be done by a High Court judge moving round.

3120. The next point is with regard to separation orders. Have you had any experience which enables you to give us a considered view as to the county courts taking the jurisdiction of the magistrates?—I have no personal experience myself. There are very few separation orders in my district, but I know of some, and although I do not practice before the magistrates, a member of my firm does, and I have heard of others. They are few, but for the reasons I have given I think there should be a unification of the jurisdiction in these matrimonial causes so as to bring the separation orders before the same court as divorce.

3121. Do you mean that the county court should take the whole of it?—Yes, take them away from the justices for this reason. I agree with Mr. Pickstone that in many cases the decisions of the ordinary bench of justices, where there is no stipendiary and no legally trained mind amongst them, are not satisfactory, especially where there is a rota; people deliberately choose the rota they think most suitable for their purpose.

3122. Are you speaking from personal experience?—No, I have no personal experience of these separation orders.

3123. You say in your district in 1908 one separation order was refused and one granted, and in 1909 that two orders were refused and seven were granted?—That is the information I have from the clerk to the justices.

3124. Is that for the whole of Southend?—Southend and the neighbouring agricultural district.

3125. What is the population?—At the present time it is about 90,000.

3126. So that you would not anticipate, if jurisdiction were conferred on the county courts, that there would be much work to do?—I should think very little indeed.

3127. You are also superintendent registrar of births, deaths, and marriages for the Rochford Union?—Yes.

3128. You have given some statistics about those matters, but how do they bear upon the question that we are considering here?—I am not sure that it is germane to the question, but it may be of interest, as dealing with the question of divorce generally, as to the original form of marriage of the parties whose divorce is sought.

3129. Do the statistics show what the form of marriage has been where have been divorce cases?—No. It may be a personal predilection of mine upon the matter, and I do not wish to press it upon you if you think it of no interest.

3130. It might be useful if it showed anything, but as far as I follow you have no means of ascertaining the form of marriage of the parties where there are applications for separations, and as to whether they were refused or granted?—No, I only give the fact that here are a number of marriages which I have termed godless in distinction from those which have a religious service of some sort.

3131. You do not go on to show that that has any connection with separation orders?—No, I do not think you can draw anything from it.

(*Chairman.*) Unless we can draw something from it, I do not think it is any use going into it in detail.

3132. (*Mr. Brierley.*) What class of population is yours?—It is a residential class—boarding houses, lodging houses, and city men mostly.

3133. People who come up to London every day?—Yes, thousands travel to London and back every day.

3134. It is not a working-class population at all?—No.

3135. It is singularly happy as far as marriage disputes are concerned?—Yes.

3136. The separation cases at present are so few in number that you naturally would not anticipate much increase in business?—I anticipate no increase of business from it in my district,

3137. It is hardly the sort of population that gives rise to these cases as a rule?—I can only say it does not as a matter of fact.

3138 (*Judge Tindal Atkinson.*) There is an agricultural part of the Southend district?—Yes, a large agricultural part.

3139. I do not know how far the districts extend from Southend. What is the farthest limit?—10 to 12 miles.

3140. If there were 557 marriages in 1909, and 2 per cent of that number represented the divorce cases, it would not overwhelm the county court in a year?—No, it is next to nothing. It is 2 per cent. of the marriages for some years back.

(*Chairman.*) Where does the 2 per cent. come from?

(*Judge Tindal Atkinson.*) There are 557 marriages in the year, and I am taking 2 per cent of those.

(*Chairman.*) Yes, but where does the 2 per cent. come from?

(*Judge Tindal Atkinson.*) I suppose there would not be more than 2 per cent. of the people apply for divorces?

(*Chairman.*) Where do you get the supposition from?

(*Judge Tindal Atkinson.*) I do not know whether the figure has been actually given in the Commission, but I believe that the actual number of divorces to marriages at present in this country is under 5 in 1,000.

(*Chairman.*) We know the number of divorces. It is about 700. What is the number of marriages.

(*Judge Tindal Atkinson.*) I do not know whether we have the figure.

(*Chairman.*) We will look that up.

3141. (*Judge Tindal Atkinson.*) Do you agree with the evidence of the last witness as to the imperative necessity of the county court judge having the order or custody of children in cases where divorces are commenced?—I should say distinctly. I have had no practice in divorce, and cannot speak from my own personal experience.

3142. (*Sir Lewis Dibdin.*) In your district you have no jurisdiction in bankruptcy, winding-up, or Admiralty?—None.

3143. Do you agree with the opinion of the last witness, that in a case like yours your district ought not to have jurisdiction in divorce?—We are within 40 miles of London, and it is not a long way off; I do not know that there is any great need for having the local jurisdiction, because we are so close to London.

3144. As far as your district is concerned there is no demand for a local court?—No, but the question of expense is the same.

3145. So far as you are concerned it is a purely academical question?—Because we have so few cases, it is almost academical.

3146. (*Sir George White.*) What is the population of Southend itself, the town?—The population of the borough is about 70,000.

3147. Practically that covers your whole population?—It is the major part. The other 20,000 are in the surrounding agricultural part.

3148. (*The Archbishop of York.*) I think you said your population in Southend was very largely lodging-house keepers and persons who cater for the population of London which goes to Southend for recreation?—Not quite so. It is partly so, but there are a great many people who have their own business in London, but live in Southend and go up and down to London every day.

3149. In your population, as far as you can judge, there is very little demand for divorce?—I cannot say. I can hardly judge. At present I know of no demand. The cases I know of in which a divorce takes place in our town are very few, not five per annum.

(*Chairman.*) I see from Table 5, which, I think, Judge Tindal Atkinson was referring to, that it is 5 per 10,000 of the marriage population of 1901, but that does not show the number in proportion to the marriages per annum.

3150. (*Mr. Rufus Isaacs.*) You know that the custody of the children is a vital and important matter in the jurisdiction of the divorce division?—Yes, I do.

3151. And also that what the court has to consider is the interest of the children?—Yes.

3152. In dealing with these poor people's cases, do you think it would be of importance that the judge who has to deal with this matter should know the local conditions and circumstances?—I think it is most desirable that he should know the general conditions of the neighbourhood and of the people he is dealing with.

3153. And, in determining what is in the best interest of the children, if he knows the local conditions and circumstances, he is in the best position to determine what is to the advantage of the children?—Yes, better than a stranger.

3154. And better than a judge of assize?—Yes.

3155. Who could only get it from such evidence as was brought before him?—I think that the local knowledge would be of great importance.

3156. In the poor cases there would be the difficulty of calling a number of witnesses if there is any conflict in a matter of that kind, but, generally speaking, the county court judge who is familiar with the district would be in the best position to determine what was to the advantage of the children?—I think so. That is my opinion.

Mr. HUBERT GOUGH called and examined.

3157. (*Chairman.*) You are county court registrar of Edmonton?—That is so.

3158. You are a solicitor, but you have retired from general practice, and are living at Enfield?—Yes.

3159. Have you held the office of registrar at Edmonton since 1902?—Yes.

3160. Have you also held since 1875 the office of clerk to the justices of the Edmonton division of Middlesex?—Yes.

3161. Have you experience on both the civil and criminal side?—Yes.

3162. With regard to your experience connected with separation orders, does that extend beyond Edmonton, or is it confined to Edmonton?—It is quite confined to Edmonton.

3163. What is the population you have to deal with?—It is approximately 345,000.

3164. Is there a large proportion of the labouring classes?—There is a very large proportion of the labouring classes.

3165. Have you formed any definite opinion as to the jurisdiction of the magistrates to make separation orders being kept with them or being transferred to the county court?—I think decidedly it would be an improvement if it were transferred to the county court, but an additional reason would be if the county court had also the divorce jurisdiction.

3166. Before we get to that, I think you see both these jurisdictions at work, as I understand?—Yes.

3167. You see the justices at work, that is, not the stipendiary?—No.

3168. And the county court?—Yes.

3169. You think it would be desirable to transfer the separation orders to the county court?—I do think so.

3170. Would you give us your reasons?—First, on account of the subject matter, which I think more properly belongs to a civil court than to a court which is mainly a criminal court; and next on account of the importance of establishing an even standard of treatment and interpretation of the grounds upon which such orders should be made.

3171. Do you think that would be more likely to occur with a county court than with varying justices?—I think so.

3172. How many justices sit in your division?—About 40 take part from time to time in the actual work of the division.

3173. Are any of those lawyers?—Yes, a few are lawyers, but very few.

3174. Do you think that it would tend to uniformity to have the county court acting instead of a number of justices?—Yes, because as things stand at present there are seven centres from which orders might be made in this division, separate from each other. The system is this: the justices meet weekly at three different court-houses, and having met they split themselves into two or three courts, as the case may be, so that there are, roughly speaking, seven courts, any of which might exercise this jurisdiction, and that is in one division, corresponding roughly with one of the districts of the county court circuit.

3175. It would reduce the number of those whose views might vary?—Yes.

3176. And very largely reduce it if one takes the place of 40?—Yes.

3177. We have had it said this morning by Mr. Pickstone that business was apt to be rushed in the justices court in this class of case?—I do not agree with him. I think the law has been, within my experience, well administered, but I think the risk of diversity is always present.

3178. You know the various grounds upon which orders may be granted?—Yes.

3179. You have said you think that a transfer to the county court would ensure greater uniformity. Would that, in your opinion, be desirable if the county court had jurisdiction in divorce?—Yes, because all kinds of matrimonial causes would be domiciled in the same court. I was thinking of this. Very often, on an application for a separation order, there is also ground for a divorce which is ignored because it is not material, whereas if the county court had jurisdiction then the application would be made there, and it might be that, although proof was not complete on the question of divorce, there might be ample proof of the other grounds, and the parties might get separation.

3180. Would your view be, if the county courts had jurisdiction, that it should be limited to deal with parties whose means required a cheaper form?—I think it should be limited.

3181. Would you think it advisable, from your experience of the magistrates, or even of the county court, if it took the separation orders, that there should be power to make the order for a time, instead of making it permanent?—I do not see any objection to such a method, but I do not expect great results would follow from it. I think that people do at present very freely put an end to their own separation orders. What kind of status would the parties have when the temporary separation order had run out and no application was made?

3182. If I follow the suggestion, they would have to make a fresh application if they desired the separation order to continue?—But the tendency is, I think, to do as little as possible among the people of whom we are thinking, and it would be very likely allowed to slide.

3183. Assuming that there is a retention by the magistrates, would you confine that to any particular form of complaint?—I think for those cases that are urgent, such as where a conviction has occurred for an aggravated assault, or a conviction on indictment for assault, that a temporary separation should be annexed to the conviction, form part of it.

3184. That would be done by the magistrates?—Yes, or quarter sessions or assizes, as the case may be. That should be limited to a time, and the permanent order should be applied for in the county court while the first order is running.

3185. That is what I was putting to you before. You think in that case the assault might not be repeated, and a limited time would enable the effect to go on?—I do not think I have made myself quite clear. I would give the power of making the limited order only in those cases where an actual assault of a serious character has taken place.

3186. Then, if it was desired to make it permanent, there would have to be a subsequent application to the county court?—Yes. With regard to the other class of orders which arise out of cases of less urgency, I am speaking of desertion and persistent cruelty, they are not so urgent in point of time, and the applications may very well be made to the county court in the first instance. I do not think much result would ensue if they were temporary.

3187. There is one other point which you mention here, but it is only a point of practice as to the form of the claim. The point of that is that it should be as simple as possible?—Yes, it is one of the difficulties that the justices' courts have to contend with at the present time, to know what the issue is.

3188. What do you say as to the power to commit being retained, to commit where the order is for an allowance which is not paid?—I think it ought to be retained.

3189. (*Mr. Spender.*) You are in favour of one jurisdiction of the county court for separation orders in matrimonial cases and divorce and decrees, subject to emergency procedure by the magistrates?—Yes.

3190. And that would be temporary?—Yes.

3191. Would that go automatically?—It would not go automatically. I do not say it should necessarily be the consequence of conviction, but if the judge who passed sentence thought it should be done he would make the order then and there upon the conviction. The conviction itself is the ground for separation in such cases.

3192. You would leave the parties to carry it further if they chose?—Yes.

3193. You would not make it automatic. They would not necessarily be revised by the county court? —No, you leave them to apply.

3194. When you say that the order of the county court should be made, you mean that the proceeding should be started on application in writing?—Yes, at present the procedure, I think, is imperfect, because it simply states, for instance, "Has been guilty of persistent cruelty," without informing the defendant of what is going to be proved. It is only the procedure, but I think it is defective.

3195. In the case of the emergency order in the police-court, if the parties did not take it further, that order would simply lapse?—Yes.

3196. (*Chairman.*) I find that I have omitted a page of your proof. Will you deal with the question of costs. Have you taken out an estimate of the cost of proceedings in the High Court in a simple case?—Yes, I have seen one, but I have only seen what the bill itself discloses. It is not an undefended case. It is a defended case which presented no difficulties.

3197. Have you the bill here?—I have.

3198. Do you object to leaving that with us?—Not in the least.

3199. Is that for a decree for divorce?—That is for a divorce.

3200. There was no special difficulty in that case? —They are the petitioner's costs, the petitioner being the wife.

3201. How many witnesses were there?—Seven witnesses, including a detective witness.

3202. Where did it come from?—It must have been in or about the neighbourhood of London, because there are no travelling expenses.

3203. You put down charges 46*l.* 2*s.* 10*d.*, disbursements 40*l.* 5*s.* 10*d.*, which makes 86*l.* 7*s.* 10*d.* as the cost?—That is so.

3204. If you will leave that bill we can look at it. Have you taxed that same bill on the present county court scale?—Yes.

3205. What do you make that out at?—There is a slight error in the figures I have supplied. They were transposed wrongly. The charges are 25*l.* 3*s.* 2*d.*, and the disbursements 23*l.* 3*s.* 1*d.*, making 48*l.* 6*s.* 3*d.* in all.

3206. That is on the present scale of costs. Judge Tindal Atkinson will know what I am talking about. There are three scales?—This is on scale B, the one which carries ordinary matters up to 50*l.* I have analysed those disbursements further. In the High Court there were court fees 10*l.* 0*s.* 3*d.*, counsel's fees 12*l.* 8*s.* 6*d.*, and witnesses and other expenses 17*l.* 17*s.* 1*d.*, constituting a total of 40*l.* 5*s.* 10*d.* I estimate in the county court the court fees would have been 5*l.* 9*s.* 6*d.*, counsel's fees 6*l.* 18*s.* 6*d.*, and witnesses' expenses and other expenses 10*l.* 15*s.* 1*d.* That is including the detective witness who was, in point of fact, allowed 5 guineas in the High Court, and I presume he would have been allowed as an expert witness a qualifying fee, and I allowed 5 guineas there also.

3207. One of these charges is 46*l.*, and the other 25*l.* Are those solicitors' charges?—Those are solicitors' charges.

3208. The result is to show that on the present scale of costs it would be slightly over one-half?—That is assuming there was no simplification of procedure, that the proceedings were identical.

3209. That is on the present system of procedure taxed on the county court scale?—Yes.

3210. If that was simplified further?—If the procedure were simplified the costs would be diminished.

3211. It only goes to show it is much less expensive, after all?—I think, perhaps, this might interest the Commission. I have one or two statistics here about the number of separation orders made in the Edmonton division in a year.

3212. In your division?—Yes. It shows the proportion of orders to applications. There were 80 summonses issued upon which 44 orders were made, and 36 dismissed on various grounds, 20 for want of prosecution, 22 for want of being properly served, and on the merits 14. The grounds on which the summonses issued were, in 32 cases, desertion, in 39 cases cruelty, in 3 neglect to maintain, and in 6 habitual drunkenness.

(*Mr. Rufus Isaacs.*) They do not tally.

(*Chairman.*) Perhaps, Mr. Isaacs, you will deal with them.

3213. (*Mr. Rufus Isaacs.*) Would you give, first of all, with reference to the total number of summonses. I think you said 80. Is that right?—Yes.

3214. And of those there were 44 in which orders were made?—Yes.

3215. Will you split that up?—I cannot split up the orders. I can split up the summonses.

3216. You cannot tell us?—Not on what grounds orders were made, but as regards 80 summonses, they were issued, 32 on the ground of desertion, 39 on the ground of cruelty, 3 for neglect to maintain, and 6 for habitual drunkenness.

3217. With reference to the 36 which were dismissed, you said that 20 were for want of prosecution? —Yes, that is where the parties did not appear on the return day.

3218. What about the other 16?—Two were not erved properly, and 14 were dismissed on the merits.

3219. Will you tell me about the fees of which you have been speaking. That, I suppose, is a case which was begun and concluded on the same day?—Do you mean in the High Court?

3220. Yes?—Yes. It is obvious from the bill it was so.

3221. It was a simple defended case?—Yes.

3222. What was the addition to the adultery charge? Can you see that in the wife's petition? Is it desertion or cruelty?—I do not gather. There were two medical men who gave evidence, so that I should rather gather it was cruelty.

3223. On scale B it amounts to 48*l.* If it had been taxed on scale C it would make a very material difference?—10*l.* to 15*l.* more, probably.

3224. That, of course, is in the discretion of the judge?—That is non-existent at present. One does not know how it would be. At present what determines the scale is the value of the subject matter.

3225. You would either have to make another scale, or it would have to be left to the discretion of the judge?—Yes.

3226. It is difficult to see how you could do otherwise. The judge cannot appraise the value in money of what he is doing?—No.

3227. Would all those costs be allowed in the ordinary course in a case in the county court?—The whole thing is hypothetical, of course. Many of these proceedings do not exist in the county court.

3228. I wanted to understand this. You have taken a high court bill and taxed on the county court scale of allowances for things which the High Court has allowed?—Yes.

3229. It does not follow in the county court system of taxation that the things which the High Court has allowed to be charged would be allowed in the county court?—It does not; it would depend upon what modifications of the scale itself were made, but I presume if the jurisdiction were transferred that the scale would be modified so as to include what the procedure requires.

3230. It would require a very considerable modification before it was accessible to an ordinary workman? —I think so.

3231. The idea in a suit, which is to take one day, and, where there is a defence, that the costs would run to 48*l.*, would make it absolutely prohibitive?—The expenses of witnesses are a large element in it, of course, but I quite agree to that.

3232. There would have to be a very considerable modification?—I think some simplification of procedure would be necessary, and I should also say that, in taxing this on that scale, I have allowed the utmost I think could be allowed in order not to try to give an unfair impression as regards the costs.

(*Chairman.*) Would you mind asking, Mr. Isaacs, what the most expensive cost of a separation order is, where there is a contest on cruelty. I think perhaps that would tell us something.

(*Sir Lewis Dibdin.*) Before the magistrates.

(*Mr. Rufus Isaacs.*) Will you tell us that?——

(*Witness.*) The costs of the court are very small. It would rather depend upon what number of witnesses were heard, but probably it would not exceed 12*s.*, or something of that kind, where there were several witnesses.

3233. (*Chairman.*) Can you give us no idea what it would cost in a case where cruelty was proved, and there are two or three witnesses to support the wife, or perhaps the husband, and a couple of witnesses to deny it. Those contests must occur often. What is the total cost of each party to fight that before the magistrates?—In a very large number of cases, nothing beyond the court fees are imposed on either party, and one does not hear what they are.

3234. (*Mr. Rufus Isaacs.*) You have no taxation?—No.

3235. There are no party and party costs to be paid, and you would only know what the court fees are?—The court inquires what the fees of the court are, and they are inserted in the order then and there. As a rule, no professional charges are allowed. Occasionally they are allowed, when a lump sum of one guinea or two guineas, according to the position of the parties, would be added.

3236. It does help us to arrive at some idea of the difference if you tell us this. The court fees in a separation order, that is to say, the amounts which would be paid to the court itself for a summons, would be extraordinarily small, something like 2*s.*?—Yes.

3237. The other expenses, of which you have spoken, would be for subpœnas?—There would be the expense of subpœnas, if there were any, but there are usually none.

3238. Usually the persons attend for either party?—Yes.

3239. What would the extra 10*s.* be for? I think you said about 12*s.*?—One shilling on the oath of each witness, on the examination of each witness, then the order, and a copy, and so on.

3240. That could all be done for 12*s.*?—Yes, and usually less.

3241. I do not quite follow. Why is it in a county court your court fees would be 5*l.* 9*s.* 6*d.*? What do those court fees consist of?—The court fees would be the fee on the petition, which would be equivalent to the plaint fee, the hearing fee, and some fees on filing affidavits, and the fee on the interlocutory order.

3242. I am not quite sure that I recollect the practice. Is the hearing fee 40*s.* maximum?—Yes.

3243. You do not know, when you are speaking of these suits, what the hearing fee would be?—No.

3244. That depends also on the amount involved. It is proportionate to the amount involved in most cases?—It is 2*l.* if you get up to 20*l.*, and it does not increase after that.

3245. How do you propose that the orders which the county court would make should be enforced?—I should propose that they should be enforced as at present.

3246. By attachment for disobedience?—It is not, strictly speaking, attachment. They are enforceable as a conviction is enforced.

3247. You are speaking of the enforcement of an order of this character, and comparing it with a separation order in a magistrates' court?—Yes.

3248. That is not what I meant to ask you. Take the ordinary case in a county court. If an order is made you can enforce it by attachment?—No, it is enforced under the Debtors Act.

3249. Is that the only means you have?—That is distinct from the method at present employed for enforcing separation orders.

3250. Would you mind not taking into account separation orders or divorce orders. I want to know what is the ordinary means now of enforcing a county court judge's order?—A summons under the Debtors Act, in which it is incumbent upon the plaintiff to establish that the defendant has had means or has means.

3251. That must mean an order to pay money?—It is so.

3252. Are there other orders?—He may commit in that case.

3253. Apart altogether from money payments which have to be made, a county court judge orders a certain thing should be done, say file an affidavit of documents or answer interrogatories, The ordinary process would be that he can attach?—Yes.

3254. For disobedience to his order?—That would be enforced by attachment?

3255. I am not sure whether I recollect rightly. Has he full powers of committal for contempt?

(*Judge Tindal Atkinson.*) Only for contempt in court, not for contempt out of court.

(*Mr. Rufus Isaacs.*) It is a limited jurisdiction as to contempt?

(*Chairman.*) He has no power to commit for disobedience of an order.

(*Judge Tindal Atkinson.*) For disobedience of an order, but not in the ordinary sense of contempt in court. It must be in the court itself.

3256. (*Mr. Rufus Isaacs.*) He cannot commit for a newspaper reference like the High Court can?—No.

3257. Supposing an order was made against a man for maintenance, the means you would have of enforcing it would be, apart from any special rights conferred upon you, simply under the Debtors Act?—Unless they were conferred. That is why I introduced the paragraph recommending that the present method of enforcement should be preserved.

3258. It is because of that I asked you the question. You mean the present method of enforcement in the magistrate's court?—Yes.

3259. So that your view would be, upon an order being made by the county court it should rank as a conviction, and confer on the county court the jurisdiction of the magistrate's court under a conviction?—That is so.

3260. That would give the county court judge the power to sentence to imprisonment?—Yes.

3261. And also the power to issue a warrant for the arrest of the man?—Yes, if the same procedure was followed he would be arrested, in the first instance, to show cause why he should not be committed.

3262. That seems to involve the necessity for police attendance. In the magistrate's court, as we understand from what one of the witnesses has told us, dealing with what I conceive to be an important difficulty in enforcing these orders for maintenance against delinquent husbands, the magistrate's court has the power to issue a warrant and arrest the man, and bring the man before the court. I want to find out how the county court could do that. It could not, unless it had the same power granted to it, and that would necessitate the assistance of the police?—If the existing procedure was transferred as it stands it would be so; there would be the power in the county court, as there is now in the court of summary jurisdiction, to issue a warrant for the arrest, and also to commit after the arrest has been made, and no cause shown to the contrary.

3263. You think that would not be difficult?—I do not think at all. Such committals as take place at present in the county court are done by the court's own officers and the arrests.

3264. Supposing it was necessary to arrest a man who had gone from London to Newcastle, and was not obeying a maintenance order, and the wife applied, how would you enforce the order against him in Newcastle?—At present?

3265. Yes?—At present the warrant would be issued in the home court and sent up to Newcastle and "backed" or confirmed.

3266. That would be done through the magistrate's court?—Yes.

3267. You would require a similar power in the county court?—That it should be re-issued and sealed in the district of the court where it is to be executed. Having been issued from the court where the proceedings are, it would be dispatched to the foreign court and there re-sealed, and executed there.

3268. It would be necessary to have the same jurisdiction powers as the magistrate's court would have on conviction?—I think so. I think if you made

the power to commit dependent upon proof of means a great many orders of maintenance would fail altogether.

3269. That would result in this, according to your view, that instead of the wife having to prove the husband has the means, you would call upon the husband to prove he has not the means?—Yes.

3270. That might lead to considerable hardship by bringing a man from the north of England, for example, to the south, under a warrant, in order that he should establish to the court that he has not the means to comply with a maintenance order?—I think he must not complain if something is exacted from him in consequence of his original misconduct and subsequent disobedience of the order made. If he cannot satisfy the order I think he must not complain if an alternative of some sort is imposed upon him.

3271. It occurs to one that that is rather a cumbrous and serious way of doing it. It may turn out that he is incapable of paying because he is out of work?—The alternative would be the man would take himself out of the jurisdiction of the court and evade the order for ever.

3272. It occurred to me that there might be a simpler method by transferring the inquiry from the one court to the other. I want to see how you manage to get at the man who is not paying without imposing too great a hardship on him. Could you not, in such a case as I have suggested of London and Newcastle, have the case remitted from the county court in London to the county court in Newcastle, and let there be an inquiry as to his means?—It seems to me you must either bring him to London or the applicant must go from London to Newcastle.

3273. Is that necessary? I am suggesting that might not be necessary. Supposing he has not paid and you want to inquire to ascertain whether he has the means?—If he comes before the court at Newcastle, and says he has paid, what is that court to do?

3274. In most cases there would be no difficulty as to that. That would not be the point at issue?—I do not know that it would not.

3275. You think it would?—I think it might be.

3276. I am not putting to you the case of a man who has not paid for one week or two weeks, but a man who has not paid for some time?—All sorts of confusion arise on this very thing. The order is made, it is not complied with, and the wife obtains a warrant for his apprehension, and he is brought up and states that he is out of work, and has not the means to pay, and the common result is that the justices make a commitment and suspend it, and then he makes some payment under the original order. In the meantime the current payments are going on and they get mixed up together and confused, so that it often happens that a man honestly thinks that he has paid when he has not, because the money he has paid has been appropriated to the other account. There are difficulties of that kind which arise.

3277. In the case of a man who has not paid for a number of weeks no such difficulty can arise?—If he has not paid.

3278. I am thinking of a man against whom an order has been made in London who has paid one or two weeks, and does what is by no means uncommon, leaves London and goes to work at Newcastle, and the wife ascertains that he is in Newcastle and requires him to pay this money, and calls upon the court. Supposing he is in Newcastle, either in work or out of work, does it not occur to you that it might be easy for the court to inquire as to what his means were and whether he was able to pay or not? It is a simple enough process, is it not?—Yes, but I do not see how that meets the case if he alleges that there is nothing due under the warrant.

3279. It would not meet that particular case. That is an issue of fact between the parties?—Yes.

3280. You do not see any difficulty in that inquiry?—No.

3281. It is a mere question of machinery, of transferring from one court to the other to ascertain whether he is in a position to pay, and why he has not paid?—There is no necessity, in committing under the present system, to ascertain his means. The power is absolute. He has not to show want of means. It does not depend on that.

3282. The court must inquire into that?—The procedure is assimilated to the procedure of an affiliation summons. That is how the statute puts it.

3283. Do you mean that a court at the present day, under the present procedure, would commit a man to prison because he has not paid under the maintenance order, although he is unable to pay?—Yes, I do not say what a court would do; I say the court could do it properly.

3284. It has power to do it, but do you know of any case in which the court has done it?—I remember a case which is in a book which was referred to just now, where a man was sent to gaol for non-payment of arrears amounting to 175*l.*, on an order of maintenance under a separation. While he was in prison serving his time, further arrears amounting to 175*l.* accumulated, and he was arrested on leaving the prison for the second amount. On being brought before the court, he protested that he was absolutely without means, and manifestly he had not during the term of imprisonment any opportunity of obtaining means; nevertheless, the thing was supported.

3285. Is he still in prison?—I think it has gone by; I think the term is up before now, but the result was not interfered with. It is a quoted case.

3286. Is that under the 1895 Act?—I believe so.

3287. Is it quoted in Stone's "Justices Manual"?—Yes.

3288. 175*l.* strikes one as rather a large amount?—I think it is too much for affiliation.

3289. It is, of course, rather a large amount for a maintenance order. Do you remember what time it was?—It is a short note. It does not explain why it was so large.

(*Mr. Brierley.*) He might have had private means?

(*Chairman.*) Why did not he apply to discharge the original order, or to reduce the amount. There is power under the 7th section to cut down the amount of the weekly payment if the man cannot pay. It is constantly done. I suppose that man did not do that?

(*Witness.*) I only mentioned that for the purpose of showing the power was absolute, and not dependent upon the presence or absence of means.

3290. (*Mr. Rufus Isaacs.*) Of course not. It is quite different from the jurisdiction given under the Debtors Act. There is no suggestion to the contrary. The county court judge has power to commit for contempt for non-payment of a debt, if he is satisfied that the man has the means to pay and will not pay?—Yes.

3291. That is the procedure and jurisdiction under the Debtors Act. Under the conviction he has the power to commit whether the man has proved he has means or not, but I wanted to ascertain whether, in your time, you have had experience of these maintenance orders, and if you have known a man committed to prison for non-compliance with an order with which he was capable of complying?—Yes. I think the problem of discovering whether he is capable, or incapable, cannot be satisfactorily solved.

3292. Supposing a case of this kind comes before the magistrates; you have had experience of cases, I suppose, in which there is an attempt to enforce the maintenance order for the benefit of the wife?—In the same period of time, one year, four persons have been conveyed to prison in the Edmonton division as against 40 orders made.

3293. There might be some applications made to enforce the order in which there is no committal to prison?—Yes.

3294. Those are not included in your list?—Just the commitments actually issued. I have no record of it.

3295. With reference to those four, or any one of those four, do you mean to say that the question of the man's means to pay is not gone into?—I mean that the magistrate would inquire what he is doing, and what he is likely to be able to do, and ultimately he says: "Well, you must do something; I will commit

" for such-and-such a period, and suspend it as long as " you pay so much a week."

3296. That does take into account his means?—It does in practice. If that is not complied with, the committal will go without more inquiry.

3297. The practice will then be, I understand, to ascertain what the man is able to pay, as far as you are able to judge from the evidence before the court, and then order that he shall pay it, and failing that, the committal order shall be effected?—It comes to that.

3298. You must get an inquiry as to the man's means in any case?—I did not want to be understood as saying that there can be no such thing as a committal without inquiry as to means.

3299. Nobody suggested that; of course, there is the power. I wanted to see how the Act was administered?—That is how it is administered within my experience, and some, a small number, ultimately do go to gaol.

3300. Am I right in saying, in your experience, that there is no case in which the magistrates have committed a man to prison where it was apparent he could not pay any sum towards the maintenance of the wife? —I should not like to go quite so far as that; I think if the court thought he was obstinate in the matter, they might commit.

(*Sir George White.*) You mean if the magistrates are satisfied that the fellow has no disposition to pay, that he will not make the opportunity, although he has no income and no means to pay, but that he could if he had any disposition earn some money and pay. In that case, although there is no proof of means, the whole disposition of the man is taken into account, and he is sent to prison in the hope it will make him work and find means. Those are the cases I think you mean?

3301. (*Mr. Rufus Isaacs.*) Is that what you mean? —That is very nearly what I mean. I think they would not ultimately, if the case was pressed, part with it and say, " This man has, as far as we can see, nothing " to pay with, therefore he may go about his business." I do not think they would do that.

3302. Not if they were satisfied he was doing his best to work and return the money?—If they were satisfied of that, they would not take that course. If it was all negative, if he said, " I have nothing, I cannot " do anything, and I will pay when I can," and did no more, they would issue a warrant, and if nothing came of the warrant he would go to prison.

3303. That would be because if he set himself to obey the order he might do something?—Yes.

3304. (*Sir Lewis Dibdin.*) In the case you have been discussing with Mr. Rufus Isaacs, is the wife served with the process to commit? Is she present on the application to commit?—She makes it.

3305. With reference to the suggestion of a transfer to the place where the husband happened to be, would it prejudice the wife's case if she were not present when the application was heard? Would it prejudice her case is what I mean?—The object of the warrant is to enable the defendant to show cause why he should not be committed. In many cases he might say that he has satisfied the warrant, and there would be nobody there to deny that.

3306. Unless the wife is there?—Yes, it involves one or the other being brought.

3307. He might claim he could not pay through lack of means, which she might be able to disprove?— Yes, that is a very difficult question.

3308. You do not think it would work unless the wife had an opportunity of being present?—I think that there is no more advantage in leaving him at Newcastle in order that she may go there than in bringing him up to the court where she is.

3309. I want to ask you a word about costs. In a simple defended case the costs come out on scale B at 48*l.* odd?—Yes.

3310. That is in a county court. You think that amount might be lessened by a implification of practice?—I do.

3311. And equally the costs in the High Court, which come out at present at 86 might also be lessened by a simplification of practic?—Yes.

3312. That is enough for me unless you want to add something?—Yes, I should say this, that there was a substantial interlocutory application for alimony in this particular case, which might occur in nearly every case, but that is a reason why these costs are higher considerably than an ordinary county court action involving 30*l.* or 40*l.*

3313. Take the 48*l.* and the lessened sum which would be all that a simplification of practice would render necessary. Do you imagine any simplification of practice would bring the costs of a county court divorce case anywhere near the costs now spent on a separation summons?—No, nowhere near that, but I think they might be very much brought to approach the procedure under the Workmen's Compensation Act.

3314. A summons under the Married Women's Act before the justices is a rough-and-ready system where the witnesses get 1*s.* each?—Yes.

3315. And everything is done on that scale?— Yes.

3316. And the whole matter is done in a rough kind of way? Would that be adequate for such an important thing as divorce itself?—No, I do not think it would be adequate for divorce itself.

3317. With regard to separation orders, I think you have said sometimes grounds of divorce exist where the application is to the justices for separation?—Yes.

3318. That is not, I suppose, by any means always the case?—By no means.

3319. Would you say that it was even in a majority of the applications for separation orders?—No, I should say certainly not.

3320. I think you have said that very often after those orders the people freely put an end to them and come together again, and that there is a reconciliation? —Yes, but that is only hearsay knowledge on my part. I have been told by the warrant officer at the court that he estimates as many as one-half come together again voluntarily.

3321. I suppose it would be entirely inaccurate to take the number of separation orders in the country as anything like an index to the number of possible divorces if only divorce procedure were cheapened?— No.

3322. It would not be a fair criterion?—By no means.

3323. In your experience, are too many separation orders made?—I should like to put it in this way, that there is the same difference of opinion amongst magistrates as there is amongst other persons.

3324. Even county court judges?—Yes, as to how freely or reluctantly orders of that kind should be made. Then there is the way these cases are tried; they are very often not prepared before they come into court. The applicant is invited to tell her story, and before she has got very far she is contradicted by the other side, and a torrent of recriminations passes from one side to the other. Every effort is made to get at the facts of the case, but sometimes it is very difficult to extract what is the necessary element, that is, what are the acts of cruelty committed. After hearing a good deal of it, some people say, " Here is a miserable " and unhappy state of things, it would be far better " if they were separated," and they lose sight of what is the essential ground now under the present law.

3325. Does your experience agree with mine, when these cases are on there is such a confusion caused by the recriminations, that unless the clerk keeps his head the court is very likely to get into a state of some confusion?—Yes, they are very difficult cases to deal with satisfactorily.

3326. In your division sometimes seven courts are sitting simultaneously?—Not simultaneously. There will be three in this place to-day and there will be two in another place to-morrow, and there will be two in a third place the next day or the day after.

3327. You can only be in one place at once. How does the bench under those circumstances get the assistance, which I am sure you will agree with me they require, of a skilled clerk?—I am present myself as a rule in the principal court. My former partner

would be there, and there is an experienced managing clerk who helps to assist in the third court.

3328. These applications may come in any one of these courts?—Yes.

3329. Does not that present a considerable difficulty in giving the bench advice?—I am not saying that it is a perfect arrangement. It is for that reason I think it would be better if the work was focussed.

3330. (*Judge Tindal Atkinson.*) Supposing you taxed under scale A, that would make a very material reduction?—Yes.

3331. Mr. Pickstone thought they should be taxed under scale A. If you eliminate counsel's fees, and allow one of the solicitors practising in the court, that would make a great reduction, would it not? I think you put the counsel's fees as six guineas in the county court?—6*l.* 18*s.* 6*d.* That was on the supposition that there should be a counsel's fee allowed for settling the petition, as there is in the High Court. I allowed the corresponding figure.

3332. If you eliminate that, and the parties themselves can go to the court, and with the assistance of the officers and clerks have their proceedings filled up and served, and you assume that the only thing that will be required at the trial is the presence of one of the solicitors practising in the court, that 48*l.* would be reduced down to a very small sum?—Yes, it is rare for a bill of costs under scale A to exceed 3*l.* or 4*l.*

3333. (*Chairman.*) Would you just help us to clear the ground a little on one or two points?—Yes, but may I say first that that last reply of mine was misleading? I was thinking of the lower scale when I said scale A. It might be up to 5*l.*, I should think.

3334. Under the Married Women's Act the applications to enforce are enforced in the same way as an affiliation order?—Yes.

3335. An order is made, say, for the payment of 10*s.* a week—Yes.

3336. And if a month is due that would be 2*l.*?—Yes.

3337. What is the first step that is taken, and by whom?—By the applicant.

3338. The wife goes to the magistrate?—Yes, and is entitled to issue a warrant.

3339. Is she entitled to issue that without the husband being heard?—Yes, that is *ex parte*.

3340. That warrant is sent down for execution?—Yes.

3341. By whom?—By the police of the district where it is issued, or where the husband happens to be.

3342. And the police bring him up?—Yes.

3343. On a day mentioned in the warrant, or at once?—At once.

3344. How does the wife know he is there?—He is brought immediately before some magistrate, who remands him till the day after and directs the wife to be informed.

3345. And she attends?—Yes.

3346. At whose expense is he brought up; at the country's expense?—I think that is the expense of the country.

(*Mr. Brierley.*) That is a matter of great dispute sometimes.

3347. (*Chairman.*) It is at the expense of the country or the county?—One of those public bodies.

3348. Having got there, the two have it out before the magistrate as to whether he can pay?—First of all if he has paid, and if so, how much, and, secondly, what is to be done with regard to what remains unpaid.

3349. I understand they consider whether he can pay or will not pay?—I think they rather more consider what is the most beneficial course for the woman who wants the money.

3350. Do they commit him because he has not paid 2*l.* and send him right off to prison, knowing he cannot pay? He cannot pay while he is in prison?—I have never known a committal to take place in the way your Lordship puts it, that is because of mere omission to pay, but only because they are satisfied he might have done something, and that it is no use trifling with the thing any longer.

3351. Do not they give him an opportunity of going away to do something, because he cannot pay if you send him to prison? I always understood that they made an order for committal, but suspended it if he pays so much a week, and if he does not do that, then he goes to prison?—Yes, that is the ordinary course.

3352. How long have they power to commit him for?—It is governed by the scale in the Summary Jurisdiction Act.

3353. What is the longest time they can send him to prison for?—Three months, I believe, is the limit.

3354. If he goes and stops the three months does that wipe out everything?—It wipes out everything that is on that warrant.

3355. It does not wipe out that which is running on while he is in prison, and while he can earn nothing?—That is so.

3356. Have you considered whether there is any remedy for that state of things, and whether any change can be made in regard to that?—I have considered it, but I have not been able to discover anything else can be done.

3357. It is no use sending a man to prison, because he cannot earn anything there?—He should suffer something for his default, and in that case there is nothing you can take except his liberty.

3358. What occurs to me to be so strange is this, that you send him to prison because he has not paid, and you commit him again when he comes out because he has not been able to pay what is running on while he is in prison?—I was only pointing to that case to illustrate one answer I gave as to the power of committal. That may be, and probably is, an isolated case. Myself I can hardly imagine this having occurred, but I am told that it did occur.

3359. What is the cost to a wife of taking out a separation summons?—In the county court of Middlesex the scale allows 2*s.* 6*d.* The court has the power to limit it if it thinks fit.

3360. Who serves that summons?—The police.

3361. Then the parties turn up on the day when that summons is fixed to be heard?—Yes.

3362. What is the expense of the hearing?—Anything from 4*s.* to 8*s.* or 10*s.*, according to the number of witnesses.

3363. Do each, whatever happens, bear the cost of their own witnesses?—They are in the discretion of the court to allow or not to allow.

3364. What is the maximum you have known allowed?—I may say, for witnesses and fees, that 15*s.* would be the maximum, and perhaps in proper cases, over and above that, they would allow one guinea or two guineas for solicitor's fees, if there were solicitors instructed.

3365. The maximum practically she can get a summons through for is something like two or three guineas?—Yes, the maximum, and much more frequently for 10*s.*

3366. I think you also said, in answer to Sir Lewis Dibdin, that the way in which these cases are heard, with the usual recriminations which can hardly be stopped, does show a very rough-and-ready way of dealing with these matters. Is not that so? To use his own words, he said that this was a very rough-and-ready sort of justice?—I do not find great fault with the words, but I do not think in my experience any substantial injustice has been done. I do think, however, that a professional court would be able to maintain greater order in the course of the hearing.

3367. Does it not lead a good deal to what you have said, I think, yourself, that in the state of wrangle which takes place the magistrates' mind is reduced to this, "Had not we better separate them"?—I have known cases where that thought has passed through my mind.

3368. Without considering whether what is said in the Act of Parliament has been established?—Yes, that is my meaning.

3369. Supposing that were formulated by something more formal than a summons, such as a petition, and that it was heard by a lawyer, do you not think he would be more likely to arrive at a right decision as to whether the cause complained of had been established?—I think it would assist very much.

3370. Do you think it right that any system should be made where the order involved a permanent separation between the parties, a life sentence in fact?—I think it would be infinitely better that the jurisdiction should be transferred from the justices' court to the county court.

3371. Do you suggest, if it is left to the justices, that the power to make the order should be limited in point of time?—I see no objection to it, although I do not expect great results from it. Might I mention one thing I had intended to mention which I have overlooked. Whether the jurisdiction is kept where it is, or whether it is transferred, I think it would be desirable if the condition annexed to the ground of persistent cruelty, that the wife should have previously left her husband by reason of such cruelty, were removed.

3372. We have heard that before. You mean so that she might remain in the house and be able to take proceedings?—Yes, although she had not left.

3373. You mentioned the Workmen's Compensation Act and costs connected with it. Have you got anything that will show us what are the costs of bringing an ordinary workmen's compensation claim?—I have not prepared any, but I could do so if you wish me to. Speaking generally, my impression is that the costs are extremely moderate.

3374. Are they below or above the taxed costs you have given us?—They are much below. There is the request for arbitration, which answers to an ordinary summons, and then there is an answer which shows what the issues to be tried are. Then there is the hearing.

3375. Nothing else?—Nothing else.

3376. Do you think you could send us a *pro formâ* bill of costs in an average workmen's compensation case?—Yes, I will take care to do so. (App. IV., p. 41.)

3377. With a statement of the procedure, and with papers accompanying it just to explain it?—Yes, I will do that for your Lordship.

Adjourned.

The following has been forwarded by Mr. Gough as a supplement to his evidence.

In the High Court of Justice,
Probate, Divorce, and Admiralty Division,
(Divorce.)

Between S. A. B. - - - - - Petitioner
and
J. G. B. - - - - - Respondent.

Petitioner's costs up to setting down to be taxed.

£ s. d.		£ s. d.	£ s. d.
	Easter Sittings.		
	April 15th, 1907—		
	Instructions for petition	—	0 6 8
	Attending retaining Mr. Bayford	—	0 6 8
	Paid his fee and clerk	1 3 6	—
	Attending searching for marriage certificate	—	0 6 8
	Paid for same	0 3 7	—
	Drawing and engrossing petition including copy to file fos. 13	—	1 4 0
	Attending Counsel to settle	—	0 3 4
	Paid his fee and clerk	2 4 6	—
	Instructions for affidavit in support of petition	—	0 6 8
	Drawing and engrossing same	—	0 6 8
	Attending on Deponent being sworn	—	0 6 8
	Paid Commissioner	0 1 6	—
	Attending filing petition and affidavit	—	0 6 8
	Paid filing	0 5 0	—
	Instructions for citation	—	0 6 8
	Citation parchment and præcipe	—	0 7 6
0 6 8	Attending getting citation sealed	—	0 6 8
	Paid	0 5 0	—
	Attending bespeaking office copy petition for service	—	0 6 8
	Paid for same	0 6 6	—
	„ „ examining	0 3 3	—
	„ „ sealing	0 5 0	—
	Attending to get same sealed	—	0 6 8
	Copy citation for service	—	0 1 8
	Service of petition and citation	—	0 5 0
	Endorsing certificate of service	—	0 2 6
	Attending filing citation	—	0 6 8
	Paid	0 2 6	—
	May 7th—		
	Instructions for petition for alimony	—	0 6 8
	Drawing same including copy to file	—	1 0 0
	Attending filing	—	0 6 8
	Paid	0 2 6	—
	Attending serving	—	0 3 4
	Perusing answer	—	0 6 8
	Instructions for affidavit in reply to answer for alimony, drawing and engrossing same	—	0 13 4
	Attending Petitioner upon her being sworn	—	0 6 8
	Paid oath	0 1 6	—
	Attending filing	—	0 6 8
	Paid filing	0 2 6	—
	Copy reply for service, fos. 6	—	0 2 0
	Attending to deliver	—	0 3 4
	Attending obtaining appointment to fix amount of alimony	—	0 6 8
	Notice copy and service	—	0 4 0
	Paid	0 10 0	—
	Sittings fee	—	0 15 0

				£	s.	d.	£	s.	d.
			Trinity Sittings.						
			June 5th—						
			Attending Registrar when order made for production of books. Leave to Respondent to file rejoinder.		—		0	6	8
			Attending registry for order		—		0	6	8
			Paid	0	5	0		—	
			Copy and service of order		—		0	3	6
			Perusing rejoinder to petition for alimony		—		0	6	8
			Attending Respondent's solicitors when they required to know, before the expense of inspection of Respondent's books, whether you would be prepared to accept 1*l.* a week as alimony.		—		0	6	8
			Attending Petitioner taking instructions to accept terms offered, namely, 1*l.* per week for alimony.		—		0	6	8
			Writing Respondent's solicitors accepting offer		—		0	3	6
			Attending Mr. Registrar Hardy for appointment to proceed with application for alimony.		—		0	6	8
			Notice of appointment, copy and service		—		0	3	6
			June 13—						
0	6	8	Attending appointment when alimony agreed at 1*l.* a week from date of service of citation.		—		0	13	4
			June 1907—						
			Attending drawing up order		—		0	6	8
			Paid for order	0	5	0		—	
			Copy for service and service on Respondent personally		—		0	6	0
			Attending searching if answer to petition filed and found same had not been filed.		—		0	6	8
			Paid search	0	2	6		—	
			Affidavit of search		—		0	5	0
			Attending to be sworn		—		0	6	8
			Paid oath	0	1	6		—	
			Attending filing		—		0	6	8
			Paid filing	0	2	6		—	
0	5	0	Drawing and engrossing præcipe on entering cause		—		0	5	0
			Attending for certificate and setting down cause		—		0	6	8
			Paid setting down	3	0	0		—	
			Paid for certificate of registrar	0	2	1		—	
0	4	0	Drawing and engrossing notice of setting down cause and copy to file.		—		0	5	0
			Copy and service on Respondent's solicitors		—		0	3	6
			Paid filing notice of setting down	0	2	6		—	
			Drawing bill of costs and copy, fos. 10		—		0	6	8
			Attending filing		—		0	6	8
			Notice of appointment to tax copy and service		—		0	4	0
			Attending taxing and fixing security for further costs		—		1	0	0
			Attending for order		—		0	6	8
			Paid fixing security and for order	0	15	0		—	
			Copy and service of order on Respondent personally		—		5	0	0
			Sittings fee		—		0	15	0
			Paid filing costs	0	2	6		—	
1	9	0		10	15	0	20	10	8
							10	15	10
							31	6	6
					Taxed off		1	9	0
							29	17	6
					Taxing fee		0	15	0
							30	12	6

Petitioners' further Costs since Cause set down.

			Michaelmas Sittings.						
			October 1907—						
			Drawing and copy instructions to counsel to advise on evidence		—		0	13	4
			Paid fee to him and clerk	2	4	6		—	
			Attending him		—		0	6	8
			Preparing notice to produce copy and service		—		0	7	6
2	2	0	Instructions for brief, including the perusal of lengthy extracts from the Petitioners' diary, also lengthy report of Detective Morley, and attendances upon Petitioner and six witnesses at Palmer's Green, Winchmore Hill, and elsewhere, taking proofs of evidence.		—		10	10	0
			Drawing brief and proofs, fos. 60		—		3	0	0
			Fair copy for counsel		—		1	0	0
0	0	8	Copy affidavit and petition in support to accompany fos. 15		—		0	5	0
0	1	4	The like correspondence, fos. 10		—		0	3	4
1	0	0	Entries from diary kept by Petitioner, fos. 85		—		1	8	4

		£ s. d.	£ s. d.
	Notice to produce	—	0 1 0
	Preparing subpœna *ad test* and *duces tecum*, and attending to seal	—	0 13 4
	Paid sealing	0 10 0	—
	Copy and service on Dr. Woodcock	—	0 6 0
	Paid him conduct money with subpœna	1 1 0	—
	Copy and service of subpœna on Dr. Weir	—	0 6 0
	Paid him conduct money	1 1 0	—
	Mileage to Palmer's Green and Winchmore Hill	—	0 3 0
	Copy and service of subpœna on Mr. Morley	—	0 6 0
	Paid him conduct money	1 1 0	—
	Copy and service of subpœna on Mr. Haynes	—	0 6 0
	Paid him conduct money	0 10 0	—
	Copy and service of subpœna on Miss E. M. Shepherd	—	0 6 0
	Paid her conduct money	0 5 0	—
	Attending searching cause list	—	0 13 4
	Attending counsel with brief and papers	—	0 6 8
	Paid his fee and clerk	5 10 0	—
	Paid conference fee	1 6 0	—
	Attending conference	—	0 13 4
0 1 6	Telegram to Petitioner that case in list and to attend Court	—	0 5 0
	The like to three witnesses	—	0 4 6
0 3 6	Paid telegrams	0 3 6	—
1 1 0	Attending Court, cause heard, and decree nisi pronounced	—	3 3 0
	Costs of making decree nisi absolute	—	2 3 10
	Drawing Bill of Costs and copy folios 6	—	0 4 0
	Attending filing	—	0 6 8
	Paid	0 2 6	—
	Copy and service appointment to tax	—	0 4 0
	Attending taxing	—	0 13 4
	Paid taxing fee	—	—
	Attending for Order	—	0 6 8
	Paid	0 5 0	—
	Copy and service	—	0 5 0
	Sittings fee	—	0 15 0
	Letters, messengers, &c.	—	1 1 0
	Paid witnesses:		
	Dr. H. C. Woodcock	3 3 0	—
	Dr. J. Ferguson Weir	3 3 0	—
12 12 4	Mr. James Morley's account	17 17 4	—
	Miss Shepherd	0 10 0	—
	Mr. Haynes	0 10 0	—
	Mrs. Shepherd	0 10 0	—
	Mrs. Bowerbank	0 10 0	—
17 2 4		40 2 10	31 6 10
			40 2 10
			71 9 8
		Taxed off	17 2 4
			54 7 4
		Taxing fee	1 8 0
		£	55 15 4

	£ s. d.
Costs up to setting down	30 12 6
Further costs	55 15 4
Total	86 7 10

Estimate of Plaintiff's Costs in County Court Actions under Lower Scale and Scale A.

Lower Scale.

Applicable to Claims up to 10*l.*	Without Solicitor.	With Solicitor ordinary.	With Solicitor if specially allowed by Judge.	With Solicitor and Counsel if specially allowed by Judge.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Court fees	1 11 0	1 11 0	1 11 0	1 11 0
Solicitor's fees throughout	—	0 18 0	1 8 0	0 18 0
Counsel's fee	—	—	—	1 3 6
	1 11 0	2 9 0	2 19 0	3 12 6
Add if trial by Jury	0 8 0	0 8 0	0 8 0	0 8 0
	1 19 0	2 17 0	3 7 0	4 0 6*

* These totals are exclusive of costs of substituted service, adjournments, and allowances to witnesses.

Scale A.

Applicable to Claims above 10*l.* and up to 20*l.*	Without Solicitor.	With Solicitor.	With Solicitor and Council.
	£ s. d.	£ s. d.	£ s. d.
Court fees	3 1 0	3 1 0	3 1 0
Solicitor's costs throughout where there is no real contest	—	2 7 6	2 5 10
Counsel's fees	—	—	2 4 6
	3 1 0	5 8 6	7 11 4*
Add Solicitor's and other costs (including Jury fees 8*s.*) not usually incurred, except in seriously contested cases.	0 8 0	1 8 8	1 8 8*
	3 9 0	6 17 2	9 0 0

(Signed) HUBERT GOUGH, Registrar,
Edmonton County Court.

* These totals are exclusive of costs of substituted service, interlocutory applications, adjournments, and allowances to witnesses.

Winchester House, St. James's Square, London, S.W.

SIXTH DAY.

Friday, 4th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace THE ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) I desire to make this statement, which will be useful. The Commissioners have communicated, through their Secretary, with as many representative bodies of people as it was possible to discover who might give useful information to the Commission, but it is not possible to be certain that all the bodies who might assist the Commission have been communicated with. Some may be unknown to us, and, therefore, I desire to say that anybody who wishes to send a representative, and has information that will be useful to the Commissioners, it will be desirable that they should communicate with the Secretary.

Will the Secretary kindly produce the further communication that the Colonial Office has sent, as to the law with regard to publicity. The Colonial Office, as I said the other day, have courteously taken the trouble to go through the Acts of Parliament, and we have had the New Zealand one, and now they have supplied us with three or four more.

(*Secretary.*) I have received the statute of the colony of Victoria, of July 1900, in which there is a section—number 121—dealing with the question of publication of reports. Also the statute of the colony of Queensland, of October 1907, dealing with the same subject in the second section; and the statute of New South Wales dealing with the same subject in the 81st section. I have also received a report on an inquiry held by the colony of New Zealand, before a Select Committee of the House, on their Divorce Bill, the Committee being in September 1905.

(*Chairman.*) I see the Queensland one is: "The court "may, on the application of either husband or wife, or "at its own discretion, hear, try, and determine, any "matrimonial action in chambers, and may at all "times in any such action, whether heard and tried in "chambers or in court, make an order forbidding the "publication of any report, or account of the evidence, "or other proceedings therein, either as to the whole, "or portion thereof, and the breach of any such order, "or any colourable or attempted evasion thereof, may "be dealt with as for contempt of court." Then New South Wales, section 81: "The court or any "judge presiding at a trial on circuit, may, in any "suit, at any stage thereof, and from time to time, "make an order forbidding the publication of the "evidence therein, or any report or account of such "evidence, either as to the whole, or portions thereof. "The breach of any such order may be dealt with as "contempt of court." The third is the same as Queensland.

Mr. THOMAS PENSON GRIFFITHES called and examined.

3378. (*Chairman.*) Is you name Thomas Penson Griffithes?—Yes.

3379. Are you a partner in the firm of Chester, Broome and Griffithes?—I am, my Lord.

3380. 36, Bedford Row?—Yes.

3381. You joined the firm in 1880?—Yes.

3382. And the divorce business has always been in your department?—Yes, my Lord.

3383. Are you agents for over one hundred country solicitors or firms?—Yes, somewhere upwards of a hundred.

3384. As such agents do you do their divorce business?—Yes, my Lord.

3385. Do you also do some divorce business of your own; I mean when the clients come straight to you?—Yes, that is so, my Lord.

3386. I think you have in your office generally about 10 or 15 divorce cases current?—That is about the average.

3387. May I take it then you consider you have considerable experience of divorce practice?—Yes, I think so.

3388. First with regard to conferring jurisdiction on county courts, or other inferior courts. Have you had any practical experience of the hardship on parties through poverty?—I have not had an opportunity of meeting people who have been estopped from proceeding in the High Court through poverty, personally.

3389. Your people are people who can pay?—Yes.

3390. Are you asked by country solicitors to quote the lowest figures for undefended suits?—Yes, very frequently.

3391. What do you put it at?—About 30*l.* to 35*l.*

3392. That is the quotation you make?—Yes, irrespective of the cost of bringing witnesses to London.

3393. That would give your London agent about how much profit?—About 10*l.*

3394. Does he share that with the country client?—No, that would leave the London agent about 10*l.* after having divided equally the profit with the country client.

3395. Is that a profit, or charge for the work done?—Profit.

3396. (*The Earl of Derby.*) 20*l.* profit?—10*l.* would be the profit the London agent would actually get in money.

3397. (*Chairman.*) Is that 10*l.* pure profit, or does it include some payment for your work in the office?—It is the difference between money we receive and money we pay out of pocket, without taking into account any question of staff expenses.

3398. That is what I mean?—Yes.

3399. It is not pure profit?—No, my Lord; it is gross profit, not net profit.

3400. The office has to keep its staff going, and the partners have to live?—Yes.

3401. The actual court fees are what?—5*l.* 5*s.* including the decree absolute.

3402. What have you included for counsels' fees?—In the 35*l.* we include about 8*l.* for counsels' fees.

3403. Does that include settling the petition and conducting the case?—Yes.

3404. Now where do you get that 35*l.* from?—From practical experience, my Lord, of many years.

3405. Of the lowest cost of an undefended case?—Yes.

3406. That is without the witnesses?—That is without the witnesses.

3407. Then I take it what you are saying is that the country solicitor would have his charges in addition?—Yes, he would have some charges in addition.

3408. What happens? Do you always find when you have made that quotation the case comes forward or that it does not?—No, my Lord, it very frequently drops, and of course we infer from that that the costs have been prohibitive.

3409. What advantage is there in the right to sue *in formâ pauperis?*—Very little indeed. We are very seldom asked to take a case *in formâ pauperis.* Of course, in those cases the solicitor who gives his services does so because he knows of the hardship on the parties individually. That cannot be the case with regard to a London agent.

3410. He wants his charges?—He cannot of course know of or have any personal sympathy with the people in hardship or difficulty, as the country solicitor can. The London agent can have no such sympathy and therefore the London agent requires to be paid.

3411. Just as if it were not *in formâ pauperis?*—Just as if it was not *in formâ pauperis*; but *in formâ pauperis* we are not allowed to take more than a very small fee; therefore, we see very little or nothing of them — we have had very few *formâ pauperis* cases through the office in my time.

3412. What do you suggest about taking the evidence by affidavit?—I cannot think it can be satisfactory. The questions at issue are questions of fact, and I venture to think it is impossible to determine facts correctly on affidavits without cross-examination of the witnesses who have made them.

3413. But in the undefended cases, would it be your view that it might apply there, or that the judge should see the witnesses?—I think, my Lord, it would open the door to collusion immensely. There would be no difficulty in framing an affidavit on which no perjury would lie, yet which would misrepresent the facts, or which would not set out the facts which a court would elicit.

3414. Then the next point is about the King's Proctor; will you explain what you say about that?—I think, my Lord, if jurisdiction were conferred on local courts it would open a very wide door to collusive suits. The King's Proctor could not, I apprehend, possibly watch every county court in the country; and I think there is another safeguard against collusion in the High Court. The experience and skill of the judges who always, if I may say so to your Lordship, who knows it perfectly well, are on the look out for anything of the kind. I think that is a very strong safeguard. I think there is a further safeguard in the honour and standing of the counsel practising in the Divorce Court. I believe they would not present a case they knew to be collusive to the judges, and I think also with regard to the proposals to confer divorce upon the county courts (it would, I suppose, be limited to the poorer classes), the result would be that it would be an instance of one law for the rich and another for the poor, giving the poor an enormous advantage over the rich.

3415. When you speak of the King's Proctor watching a case, I dare say you are aware he never watches a case until it is heard?—Yes.

3416. He inquires afterwards?—Yes.

3417. Therefore his inquiry would still be at the place where the people came from?—But he would only inquire if he were put on inquiry, I apprehend.

3418. But at the present time he is put on inquiry by anybody who communicates with him, or by his agents in the country?—Yes, but we would not get the safeguards of the case being heard in court.

3419. I am speaking of a case heard in court?—In the country?

3420. Yes?—But what I mean is this: I think the King's Proctor—I would say perhaps nine times out of ten—he is put on the scent by something which occurs in court.

3421. That is got by the shorthand note?—Yes.

3422. That would equally be so if it were tried in the country?—If there were a shorthand note laid before him?

3423. Yes?—I apprehend there would be such an enormous volume of them. It seems to me there would be a very large increase in the duties of the King's Proctor.

3424. They would be increased?—Yes, very largely increased.

3425. If you found that the local court was availed of?—Yes, a very large increase.

3426. And therefore a corresponding increase in the King's Proctor's work?—Yes.

3427. Now take your view as to this jurisdiction possibly producing those results. If it is not conferred how do you propose to cope with those cases—the figures you have given—showing that they cannot bring their cases?—Of course, my Lord, it is an exceedingly difficult problem and one on which it is almost impossible to offer an adequate suggestion; because I venture to think it is obvious that so long as divorce jurisdiction is to remain on the extremely high plane and standard which it has hitherto occupied it must cost money. I venture to think (I speak with great deference) you cannot get as efficient justice cheap as you can expensive. In many cases no doubt an

inferior court would be perfectly efficient to deal with divorce cases, but in very many cases I think a county court would not be competent.

3428. But would not that be met by leaving the judge in the country or in the High Court to send a case to be heard in London if there was any complication?—What strikes me is that there would be such a wide divergence of practice among the county court judges that some of them would not avail themselves of that power. I have no doubt if a county court judge of great experience and no strong leaning one way or the other exercised such a power the result would be satisfactory. If a judge in the county court would say, "This case is beyond me, I will send it "away," but I think many county court judges, and those particularly who hold strong views either in favour of relaxing the law or of making it more strict, would not avail themselves of that power.

3429. Would that difficulty be met by limiting the number of persons on the county court bench who would exercise this jurisdiction and exercise it over a wider area than they do act as county court judges now? That was suggested by one of the witnesses?—I think it would depend, my Lord, in whom the selection would lie. If your Lordship were to select them I think it would answer very well indeed, but if they were selected by someone who did not practically know the idiosyncracies of the particular judges I should think ——

3430. I should think that would be the duty of the Lord Chancellor, like the bankruptcy cases?—Well, I should think it would be very difficult to select county court judges as one being more suitable than another. It would be a very invidious and difficult task to perform.

3431. But assuming the county courts were so established, it would eliminate the agency fees in London?—Yes, but I do not think it would make any difference to agents in London in this way; it is only intended to be in the small cases, and the cases that come to us would still come. The cases that would go to the county court are those which would not come to me.

3432. But those that could not afford to come would get rid of the agency fees?—Yes.

3433. And the costs of the witnesses?—Yes.

3434. And the necessity of appearing themselves in London?—Yes, that would be so, of course.

3435. Now have you any experience with regard to the separation orders?—No, my Lord, I have no practical experience, except that 10 years ago I was acting for two years as director of prosecutions of the National Society for the Prevention of Cruelty to Children. During that time we often recommended, in the interests of the children, that an order should be applied for and taken under that Act, and I think we got satisfactory results.

3436–7. Have you considered the question of those orders from the general point of view of the desirability of maintaining the law as it is or not?—Only from the theoretical point of view. I have no practical knowledge.

3438. What is your view as to the publication of divorce reports?—I have the strongest view, my Lord, that it ought to be altogether prohibited; that the only thing that should be published is the names of the parties, and the result of the suit and a statement on whose petition the decree was pronounced.

3439. Would you give us the grounds on which you arrive at that?—Yes, my Lord. The reason I form that opinion is that I think there are cases—I do not say a great many, but some cases—in which petitioners who are fully entitled to relief will not come to the court because they do not want to have their cases hawked all over London in a halfpenny newspaper in the evening; they dislike the publicity to such an extent. I have been asked in practice many times—not many times, but several times—before commencing proceedings whether it would be possible to keep them out of the newspapers. For some years I think it has been impossible in the Divorce Court to do so. Up to a certain time I think it could have been done.

3440. Now it is said that the publication acts as a deterrent to the commission of impropriety?—I do not think that, my Lord. I think when persons are about to commit an act of that sort they do not consider the question of newspaper publication. But I think there is a more important question on that point than the stopping of suits. I have found in practice, over and over again, that justice has been impeded by the difficulty of getting evidence, because people will say they will not allow their names to appear, and to be made public as giving evidence in a divorce suit.

3441. Are you now speaking of witnesses, and not the parties?—Yes.

3442. Have you had that actually in your own personal experience?—Yes, my Lord, more than once, several times.

3443. Does that apply particularly to any particular class of practice?—I think it applies to shopkeepers, where men pay bills for women; such as dressmakers, jewellers, and so on; and more particularly than anything to hotel keepers and managers. Many hotel keepers and managers, I believe, will refuse to identify photographs or to recollect incidents, solely because they desire, or are determined that they will not have their names published in connection with suits of that kind; and of course it is very natural, because it does their hotels harm; particularly a country hotel or any place like that, and I think evidence is often suppressed in that way.

3444. You say "often"?—Yes.

3445. Suppressed?—Evidence is refused in that way; a witness refuses to give a proof; and if the witness says, "I do not remember," you can do nothing more.

3446. Do you think that prevails to an extent that is serious?—To quite a substantial extent I think, my Lord.

3447. And in that way it is difficult to get justice administered?—Yes.

3448. Then judging by your experience do you consider or not that the advantages of publicity are not equal to those of suppression?—My Lord, I know of no advantage whatever which arises from publicity. It is not for me to speak of public morals; everybody can draw their own conclusions as to that, but I see no compensating advantage whatever in publishing the details from the Divorce Court.

3449. Even though they may not have indecent details, do you say they are undesirable reading for the public?—I should say they are undesirable.

3450. Why?—Because they are more or less prurient and suggestive of improprieties at all events, if they do not actually mention them.

3451. I observe you say you are aware that the "publication of his misdeeds is an appropriate punish-"ment to the guilty party, but in my experience it is "often the innocent party who suffers most"?—Yes.

3452. Will you explain what you mean?—Well, this: when a wife presents a petition she is, of course, cross-examined; if the petition is fought and the case is an important one, she is cross-examined at great length. All sorts of little family details are brought up and discussed; she has to undergo cross-examination and discussion of all sorts of things which must be very distasteful to her. That must be a necessity in court, of course, but it is far worse when every half-penny rag is hawking it round before the day is over as a sensational divorce case.

3453. Then your view is based not only on the effect on the reading public, but on the fact that it does in your view check the administration of justice, and subject an innocent party to difficulties?—I think so, my Lord.

3454. You would not prohibit the publication of results?—Oh, no, my Lord, I think that is in the interests of the public.

3455. Or any point of law?—No, I think any point of law should be published in the authorised law reports, or in the daily newspapers if necessary, under initials as is now done in nullity suits.

3456. Nullity suits heard in camera?—Yes, my Lord.

3457. With regard to procedure and practice, without going into any details, you consider at present that

does not require any amendment?—I do not think it requires any amendment, and if I may say so I think every solicitor practising in the Divorce Court would be of the same opinion and would like to express their appreciation of the kindness and consideration shown to them by the judges and the registrars of the court.

3458. Now on the subject of laws relating to divorce and matrimonial causes, have you formed any views as to whether any amendment could be made with advantage?—I think very extensive amendments ought to be made in many respects.

3459. Kindly indicate those?—I think with regard to desertion the period now limited of two years' desertion coupled with adultery is very far too long. I think in cases where the husband has left his wife to go with another woman and is living with that other woman it is monstrous that she should have to wait a period of two years before she can commence proceedings for divorce.

3460. On the point of desertion is it your view that that should alone constitute a ground for divorce?—Yes, I think so decidedly, if it was for a considerable time or permanent. I think possibly two years would be a reasonable period for desertion without any other offence, but if desertion was coupled with adultery or cruelty I think the desertion should be cut down to six months.

3461. You know the difference in the rights of men and women. Do you desire to express any view on that?—With regard to desertion now, my Lord?

3462. Now with regard to the legal position of a man or woman in the case of adultery?—I think, my Lord, that whereas an act of adultery by a woman should be a ground for divorce, I venture to think one similar act by the man should not be so. I do not know whether I am out of course in referring to the opinion expressed by Dr. Johnson and quoted by Boswell.

3463. It is a little old?—It is a little old, but I submit it is equally good sense to-day. May I read it?

3464. Certainly?—It is Boswell's Life of Johnson, 2nd chapter: "He talked of the heinousness of the " crime of adultery by which the peace of families was ' destroyed. He said, ' Confusion of progeny constitutes " ' the essence of the crime, and therefore a woman " ' who breaks her marriage vows is much more criminal " ' than a man who does it. A man to be sure is criminal " ' in the sight of God, but he does not do his wife a " ' very material injury if he does not insult her; if, for " ' instance, from mere wantonness of appetite, he " ' steals privately to her chambermaid. Sir, a wife " ' ought not greatly to resent this. I would not " ' receive home a daughter who had run away from " ' her husband on that account. A wife should study " ' to reclaim her husband by more attention to please " ' him. Sir, a man will not, once in a hundred times, " ' leave his wife and go to a harlot, if his wife has not " ' been negligent of pleasing.'" That is an extract from Boswell's Life of Johnson.

3465. Do you agree with it?—I agree with him to a very large extent; perhaps not to quite the entire length. I agree with a great deal of it. In the main I think it is right. At any rate I think it is right that there should be a substantial difference between the results of adultery in the different sexes.

3466. Do you think it makes any difference in the duty towards the other party of the marriage? The essence there cited is the introduction of a wrong element into the family?—Yes, the confusion of progeny.

3467. But do you think that the essence might be considered to-day as the duty to the other partner of the marriage?—I am afraid I do not quite follow your Lordship.

3468. To the other partner of the marriage?—That is the husband's duty of course, but does your Lordship mean, do I think the breach of that—— ?

3469. Should be different in the one case from the other?—Yes, but there is a degree of adultery by a man which undoubtedly, in my opinion, and I think in the opinion of everybody else who has watched these cases, ought to be punished with divorce by a woman if she chooses to take it. It is a question of degree.

3470. Can you give us any idea how you would arrive at that?—I think if a married man is found to be habitually keeping another woman and committing adultery with her, his wife being of course in the normal condition, I think that undoubtedly should be a ground for divorce. It is a question entirely of degree. It would be very difficult to fix a hard and fast line.

3471. How would you deal with those cases where the one case you mention has been productive of disease without communication to the other party?—I should take that as cruelty, my Lord.

3472. I am speaking of where it has not been communicated to the other party of the marriage?—When it has not been communicated I should take it as one single act of adultery and not as a ground of divorce.

3473. Although the party committing that one act had acquired one of these unfortunate diseases?—I have not considered that point of view, my Lord; it is a difficult case—very difficult.

3474. You said it was a question of degree?—Yes.

3475. Now judicial separation. Does your experience lead you to any conclusion with regard to that?—Yes, my Lord, I have very strong views about it. I think judicial separation is a thoroughly unsatisfactory decree. The position of the woman who has taken a decree of judicial separation against her husband on the ground of adultery is of course this, that so long as they both live she can never get a divorce and she can never therefore re-marry. That is of course a position which is exceedingly undesirable. A permanent separation without divorce seems to be a very unsatisfactory condition of things. And there is a further anomaly, I think, in the decree of judicial separation. If a woman has taken it on the ground of cruelty, then I apprehend if she can thereafter convict her husband of adultery she can get a decree for divorce. I think that is so, my Lord?

3476. (*Chairman.*) Yes, that is right?—But if she has taken that on the ground of adultery that cannot happen, because there cannot be cruelty after as the parties are not together. It would only happen in some of the extraordinary matters mentioned in the 27th section, such as bigamy or something of the kind.

3477. When you say a judicial separation is an unsatisfactory matter, would you be prepared to go so far as to justify divorce in any case where judicial separation could be obtained?—Yes, my Lord, in any case except in the case of the slight degree of adultery by the husband. At present a judicial separation would lie for any adultery of the husband; I would not grant divorce for that, but subject to that I would for any of the present causes of judicial separation.

3478. Now the next point you deal with is misconduct by both sides?—I venture to think, my Lord, that it is unfortunate that at present counter charges are a complete bar to divorce. We all know of cases where a husband and wife have succeeded in establishing against one another in court recriminatory charges. I think it is comparatively seldom they come together again after that has happened, and there again is the condition of permanent separation without divorce.

3479. Are you able to speak from experience as to whether in those cases there is any resumption of cohabitation or whether the general result is that they live separate?—I think the general result undoubtedly is that they remain separate. I do not know that I have had many cases in my own experience, but one knows of them and hears of them and I think that is so.

3480. You do not think it is satisfactory that they should remain tied by the tie of marriage and still lead separate lives?—I think it is an exceedingly unsatisfactory condition, and anyone who has practised largely in the court knows it leads to immorality.

3481. Now you have some observations to make on the question of collusion?—Yes, my Lord; I think collusion which is a bar to a decree should be limited to such collusion as is intended to mislead the court or to suppress evidence. Of course I distinguish collusion from anything in the nature of connivance at an act of

adultery, that is different altogether; but what has been held as collusion in the Divorce Court, I think, has been carried a very long way. I have in mind a case in which I was concerned where a husband, having clear proof of his wife's misconduct, said, "Oh, I care "nothing about it; I do not want a divorce; my wife "has left me and gone away with another man and "she can stop with him." Ultimately after discussion he said. "Well, if my wife, who has money, will make a "settlement on the only child of the marriage I will "present a petition and get a decree." The settlement was made; the wife set aside, I think, 2,000*l.* and settled it on the child; the husband presented his petition; the case came before Lord St. Helier. Counsel in the case explained the story, and, as no doubt he was perfectly right in doing, his Lordship said, "Well, I "will give you your decree because your case is quite "clear, but I shall send the case to the Queen's "Proctor," as it was then. He sent the papers to the Queen's Proctor, who intervened, and the case was tried at considerable length and the decree was rescinded on the ground of collusion, solely because of that settlement. Then we frequently get husbands who are presenting petitions against their wives, and who are desirous to make a settlement upon them. That, of course, we always have to forbid, because it would be collusive although it might not be the inducement to present a petition. I think, therefore, in those cases it would be very much better that a settlement of that kind, or any arrangement of that kind, should be permitted, so long as it was disclosed to the court on the trial, and was not in any way intended to deceive the court or suppress evidence.

3482. You have stated your point very clearly. Then you pass on to some observations about insanity?—As to insanity I have had experience of only one or two cases, but I think that certainly there ought to be divorce if insanity has lasted for a period of, you might say, two years, and there was the strongest medical evidence that it was permanent; but I think that in such cases it would be necessary to take extreme care with regard to the property which the petitioner in such a case had obtained from the other spouse, whether under settlement or otherwise.

3483. Have you yourself come across any cases actually in which you have formed the view that a separation by divorce would be desirable?—I only have one case in my mind. I have one client who has a wife in a lunatic asylum who has been there 10 or 15 years, and I know in his case it would have been very desirable.

3484. Then have you had any experience which leads you to form an opinion as to a term of sentence for crime for any period being a ground for divorce?—No, I cannot say I have had any personal experience.

3485. That is merely a matter of opinion?—Yes. One would think that a long term of separation by imprisonment ought to be followed by divorce.

3486. You had summarised what you had to say at the end of the proof, but I have not asked you what you would say as to a divorce being granted where there was cruelty of a serious character?—If there was cruelty of a grievous character I would make it a ground for divorce.

3487. The same as you would now for a separation?—Yes, my Lord, that again being a question of degree.

3488. That covers all that is in your proof?—Yes.

3489. Unless there is any other point?—No, my Lord.

3490. (*Mr. Brierley.*) I just want to ask you this. You say 30*l.* to 35*l.* would be the cost of an undefended action?—Yes.

3491. I suppose that means a petitioner from the North of England would not be able to get a decree in an undefended action for less than 40*l.* to 45*l.*?—Something like that.

3492. You would have to add on the expenses of the witnesses and the profit of the country solicitor?—Yes.

3493. So that it is at least 40*l.* to 45*l.*?—Yes.

3494. Have you no suggestion whereby the expense could be lessened, the jurisdiction remaining in the High Court?—5*l.* might be saved in court fees.

3495. That is all. You mean *in formâ pauperis*?—Yes, as to court fees.

3496. Would you suggest that it is a hardship not to be able to get this relief that a person who cannot afford this 40*l.* to 45*l.* must continue to undergo?—I am afraid it is a question of two evils, and which is the less.

3497. Can you suggest any other remedy or recourse except the county courts whereby a divorce could be obtained?—No, sir, I cannot; because I think that, at the assizes, the expense would be practically as great. Nothing would be saved but the witnesses' railway fares.

3498. One of your great objections to the county courts is the case of collusion?—Yes.

3499. Could you say how many undefended cases fail on this ground of collusion?—As the practice is at the High Court the case would not fail in the first instance on the ground of collusion, it would be a case of intervention.

3500. But I mean chances of intervention would be lessened if the case were tried in the county court?—Yes, I think so.

3501. Do you not think that might possibly be obviated by the King's Proctor employing a local agent, either some official at the county court, or anyone else he might think fit to employ?—I do not think that the registrar of the county court would have the time to do it, and, of course, if local agents were employed, no doubt that would disclose any case of collusion, but the question of expense and——

3502. Do not you think they might have equally good opportunity of discovering collusion in local cases as the King's Proctor has at present?—Oh, no doubt, sir. If you have a competent honest official placed in the position of the King's Proctor in each county court, then the difficulty as to collusion disappears.

3503. I do not suggest he should be an independent officer, but he might be a local agent of the King's Proctor?—Yes, I appreciate that.

3504. (*Sir Lewis Dibdin.*) Mr. Griffithes, have you considered Mr. Justice Deane's suggestion for dealing with the country cases?—The judge going assize?

3505. No, not going assize, but that a judge of the Divorce Court (either one of the present staff or an additional judge, the court being strengthened) should from time to time (not always the same individual, but one of the judges of that court) go round to definite centres and take country cases, as it is necessary, as part of his regular work?—Yes, I have considered it, sir. Of course it would detract very much from the efficiency of the court in London unless an extra judge were appointed.

3506. Yes; but assuming that was met by an extra judge?—Yes. That is to say, wait till cases had sufficiently accumulated.

3507. Well, I suppose it would be known beforehand that he would hold sittings in particular centres on particular dates, and unless there was no work to do he would go and do it?—I doubt if that would be more efficient than trying at assizes. I do not know whether Mr. Justice Deane's view was to admit to that tribunal solicitors to conduct the cases?

(*Chairman.*) He did not say.

(*Sir Lewis Dibdin.*) No, I do not think so.

(*Witness.*) It was not reported, and I wondered what his views were with regard to that. Then I do not think there would be sufficient economy in that. The centres would not be more wisely diffused than the assize towns. There would probably be fewer divorce centres than the assize towns.

3508. You have much greater experience than I have about this; but I suggest that the difference of the special sitting of the divorce judge would be a judge with a special knowledge of the subject and devoted to that business only?—Yes.

3509. And that that would be a very different thing from work being taken at assize amidst all the rush and confusion of other business.

3510. If that could be carried out I think it would be very satisfactory; but I do not see that there would be sufficient economy if counsel only could be heard. I think there would be very little difference in expense.

3511. You have no doubt read the report of the Lord Chancellor's Committee issued last year?—I have read it; I have not it in mind.

3512. There was a suggestion that this jurisdiction should be transferred to county courts?—Yes.

3513. That report expresses a strong opinion that even in undefended divorce cases the assistance of counsel was extremely desirable. Do you agree with that view or not?—I do; principally on the ground of the high standing of counsel, and as I said just now, if divorce is to be kept up to its present plane I think counsel and judges of the High Court should deal with it.

3514. I suppose it is a great safeguard against undisclosed collusion if counsel are engaged?—I think so.

3515. What is your view with regard to the trial of these cases by jury? Is it desirable that the trial by jury should be kept up, at any rate as a possibility, or not?—You refer to a High Court jury, and not a county court jury?

3516. I want to take the High Court jury first?—I think there are cases where a jury should be available in the High Court.

3517. You think that is important?—Yes.

3518. Perhaps in a minority of cases, but in some?—Yes.

3519. Would you think that a county court jury, as at present constituted, would be a desirable forum for that purpose?—Highly undesirable. I think a county court jury is always a thoroughly undesirable tribunal.

3520. Will you explain why?—I have been before a county court jury only very few times, but I have seen them, and their decisions have been in many cases absurd. I think county court juries have small, if any, knowledge of a case when it is finished, or understanding of what they hear, and my impression is, if a party has a friend in court, that is how the case goes.

3521. It is not always desirable that a jury should come from too near the litigants?—I think not; I think it is very desirable that they should come from a place away.

3522. Now, it is said by a witness that a jury from a county court is drawn from the same source as the ordinary common jury, and that therefore they would be equally efficient?—Well, I do not think they are.

3523. In fact. You do not think they are, in fact, whatever they may be in theory?—Yes.

3524. I want to ask you about the King's Proctor, as I am very ignorant about that question. As a matter of fact, formally or informally, is there not some gentleman present in the Divorce Court who takes a note of every case as it goes on for the information of the King's Proctor; it may not be a formal arrangement, but is it not an actual arrangement?—I really do not know.

(*Chairman.*) May I state exactly what it is. There is an official shorthand writer paid by salary; I suppose he makes something more from transcripts afterwards; but he takes a note of every case that occurs. That is never used unless it is asked for by the King's Proctor. There is nobody who watches the cases for the King's Proctor.

(*The Earl of Derby.*) Who keeps it, when he has made his report?

(*Chairman.*) He takes a note, and if anybody asks for it, like the King's Proctor, or a person sanctioned by the judge, he then makes a transcript.

(*The Earl of Derby.*) He is bound to make a transcript.

(*Chairman.*) Yes.

(*The Earl of Derby.*) Or can he refuse?

(*Chairman.*) If it is not a party he would ask the judge, so that people not entitled should not have it.

(*Sir Lewis Dibdin.*) Lord Gorell has told us about the shorthand writer. I do not quite mean that, but I am under the impression that as a matter of fact there is a gentleman (perhaps counsel) who, though holding some other official position perhaps, as a matter of fact keeps the King's Proctor informed as to what goes on in the Divorce Court.

(*Chairman.*) That is not so. The King's Proctor generally gets his information from somebody in the neighbourhood, or if the judge suspects it, he says to the registrar send the paper to the King's Proctor.

3525. (*Sir Lewis Dibdin.*) Well, with regard to the shorthand note, is it the fact that a shorthand note of every case either goes to the King's Proctor or is at his disposal?—I think if he asks for it he would have it from the official shorthand writer, but I believe they are not transcribed in every case.

(*Chairman.*) No, they are never transcribed unless they are asked for.

3526. (*Sir Lewis Dibdin.*) Supposing the jurisdiction was conferred on the county courts, especially in all county courts, but even on a select number, would not the number of shorthand notes, or occasions when the King's Proctor would require a shorthand note, be enormously multiplied?—I think so.

3527. Would not that be a great practical difficulty in dealing with the matter?—Perhaps my last answer is too hasty. The King's Proctor would not ask for a shorthand note of every case; he would only ask for it when he had some reason to do so; it would be increased in that way.

3528. How, as a matter of practical business, would the matter come before the King's Proctor, assuming the case was heard in the county court; how would he be put on inquiry?—I imagine either by the judge, or registrar, or by some of the parties.

3529. And unless that was done he would hear nothing about it at all?—When I say parties I mean somebody interested in the case.

3530. Therefore, the risk of cases being slipped through, which ought to engage his attention, would surely be greater if divorce cases were taken in a large number of courts than if, as now, they were taken in one court only?—That is precisely my view.

3531. You have explained to us the enlargement in the grounds of divorce which you regard as desirable. That is founded, I suppose, upon your knowledge of particular cases which have come before you?—Yes.

3532. The effect of the alteration of the law you propose would be to make divorce much easier?—Much easier, yes.

3533. Have you considered whether it is for the public good, from the point of view of the commonwealth, that that result should occur?—I think so. If I may say so there are expressions in the judgment of Lord Gorell in Dodd *v.* Dodd which, when it was published, I was exceedingly glad to see, because they were sentiments which had been my own for very many years before; on the point particularly of permanent separations without divorce being a very great evil.

3534. But do not you think that, in the eyes of the nation—particularly of the poorer classes—the loosening of the sense of permanence of the marriage tie would be an evil?—There is no doubt that would be an evil.

3535. And that would be an evil that would be aggravated exactly in proportion as divorces were made easier?—Yes, but again the question is, which is the less of two evils. At present, you get two married people living apart in open adultery, and that is an evil.

3536. And it is on the balance of the evil on both sides that you decide in favour of enlarging the grounds of divorce?—That is so, as far as I have been able to weigh them.

3537. May I ask what, if any, relation your view has towards the religious teaching of the New Testament?—I am always puzzled on this ground with regard to the teaching of the New Testament. Am not I right in saying that it was addressed to people living in polygamy?

3538. I am not asking your views in any way; it would be impertinent to do so. I only want to know whether your evidence gives the go-by to that, or whether you think the New Testament teaching is relevant?—I have the greatest reverence for the New

Testament teaching, but I think it was addressed to society under a different state of things altogether. If polygamy was lawful, then I think any teaching addressed to us in the New Testament is more or less irrelevant in a country where it is not allowed.

3539. (*Lady Frances Balfour.*) Mr. Griffithes, you quoted with approval, and as applying to to-day, that quotation. Curiously, I have also been furnished with it by a correspondent signing himself James Boswell. Now do you consider that that infidelity on the part of a husband with a servant in the house would be cruelty?—Does your Ladyship mean in the Divorce Court sense or actual cruelty? Of course, it would be actual cruelty of a gross kind.

3540. And do you consider such an act on the part of a husband would make a wife feel that her tie of fidelity was lessened?—It depends so very much on the character of the wife. With many wives, yes; with many wives, no.

3541. It depends on how high an opinion the wife has to the marriage tie?—Exactly.

3542. (*The Archbishop of York.*) I think in your evidence, and probably in the language of experts like yourself, collusion is clearly distinct from connivance?—Oh, yes.

3543. But connivance, if I am right, is equally a bar to obtaining a divorce?—Yes.

3544. You would agree with what is said by another eminent member of your profession, that it is almost impossible to find a case of collusion, in the technical sense, in the High Court?—I am afraid there are cases of collusion, your Grace.

3545. Do you know of many cases also of connivance?—Connivance at the actual act of misconduct?

3546. Yes?—No, I am happy to say I think they are rather rare. I have known of them.

3547. With regard to costs, would you consistently, with the evidence you have given, be prepared to cheapen the costs in the High Court to the extent of allowing the initial proceedings to be begun, say, at a county court or other local courts?—By the initial proceedings your Grace means the filing of the petition and so forth?

3548. The formal proceedings at the beginning?—But if the fees were remitted in the High Court the expenses would be the same, would they not?

3549. (*Chairman.*) Are you not overlooking that in the High Court the petitioner must come himself, or send his solicitor to file it?—Oh, you are referring to petitions presented by the petitioner in person or without a solicitor at all.

3550. (*The Archbishop of York.*) I imagine in the High Court now (I speak, of course, with very great ignorance) —— ?—There is no necessary attendance by the petitioner until the hearing of the case comes on; it is all done by handing in a piece of paper carefully settled by counsel or solicitors.

3551. You think if the fees were cheapened or remitted in the High Court there would be no great saving in taking any part of the initial proceedings from the High Court?—Quite so.

3552. Would you be in favour of the power being given to the High Court to pay for any witnesses that the judge really thought were necessary to the fair hearing of the case?—It is a question so much for the Treasury. I should think not. I should have thought it would not work satisfactorily. Of course, it is done in some criminal cases, as I think Sir John Bigham remarked. But you see, your Grace, you have to get the witnesses there before you know whether they are necessary or not. Therefore, I am afraid it would not work in practice.

3553. Then with regard to the suggestion that certain county court judges of exceptional competence should be selected to try cases over a rather large area. Would it be your opinion that even if that were done, hard cases could be alleged in which it was very difficult for poor parties to come to the place where the circuit judge was holding his court?—Yes, I think so; unless the local centres were distributed almost as widely as the present county courts I do not think there would be any great saving.

3554. With regard to the publication of which you gave very interesting evidence, if I may say so, you said that publication acted in no sense as a deterrent to an act of adultery?—Yes.

3555. Might it not act as a deterrent to the beginning of a long series of relations between certain parties?—Yes, it might, but I do not think it would.

3556. I can quite imagine no publication would deter a man from yielding to sudden passion, but would not it deter him from embarking on relations that may at any moment lead to that?—I do not think at the present time it does. I do not think men are deterred by that consideration.

3557. I was much impressed by what you said about the injustice to the innocent parties through publication. How far would that be met if the names and the result of the case, the judgment of the judge, with such details as he thought really germane to the case, were published?—Of course, your Grace, if left to the judge, nothing would be published except what was proper for publication; but then I fail to see that there would be any advantage; there would be no disadvantage in the case your Grace puts, but I fail to see any advantage.

3558. In regard to your views about desertion, if divorce were allowed on the mere grounds of desertion for a sufficient length of time, would not there be some danger of considerable connivance then to desertion which it would be very difficult to detect?—Oh, yes, it would no doubt amount to this, that two parties determined to separate would live apart for two years, and then a petition would be presented and a decree made, but I doubt if that is a very grave evil.

3559. You do not think it would have a bad public effect if people knew they had only to live apart without intercourse or communication, say, for four years to break up their family life and home?—I do not think it would be largely used for that purpose, your Grace. I do not think where there was any possibility of living together in decent and comfortable circumstances it would be availed of by parties.

3560. You do not think that persons who would scorn any idea of procuring a divorce through the commission of adultery, or cruelty, or drunkenness, or any such means might procure a divorce in this way?—Oh, yes, that might be so, no doubt, but whether it would be a grave evil if it should be so I do not know.

3561. With regard to your views on the equality of the sexes. May I take it what you meant to convey was that in your view, in the case of men and women, the offence in the sense of sin was equal, but the injury inflicted by the wife was greater than the injury inflicted by the husband?—Yes, I think your Grace has expressed my view.

3562. Equality of sin, inequality of injury?—Yes, I think so.

3563. You spoke strongly—did I understand you—in favour of the entire abolition of judicial separation as a remedy?—Yes, I did.

3564. Have you considered at all what might be the effect of that on a spouse who had strong conscientious objections to divorce, but who required some protection from the other spouse, would it not be very hard to debar her from protection?—But is it not difficult, your Grace, to think of any one who would not obtain a divorce, but would allow themselves to obtain a judicial separation?

3565–6. I have known of such cases?—Yes; I understand in the Roman church that is so.

3567. No, in my own communion frequently. Would you debar such a spouse from the right of a judicial separation?—It is a very difficult question, because it deals with matters that the lay man cannot understand as a clergyman can. I confess I cannot myself understand the condition of mind of any wife who, being satisfied her husband was not a fit man to live with, would take one kind of judicial proceedings but not another.

3568. You are aware that judicial separation was always admitted by the Ecclesiastical Courts?—Divorce *a mensa et thoro*.

3569. Yes?—Yes; exactly.

3570. But I take it you would be prepared to say that such a woman—if it was a woman—would be

compelled to be either without remedy or to take a divorce?—I think she would have to put her scruples on one side and take a divorce.

3571. One more question about abolition of recrimination which you strongly urge; might not the fact of that be greatly to increase the danger of connivance between parties?—I do not think so, your Grace; the case would have to be proved, and I understand it is the law now, as near to us as Scotland, the doctrine of recrimination does not apply there. I do not think it would tend more to collusion.

3572. But might it not tend to the parties who had obtained divorce and remarried without recrimination, subsequently committing offences and then separate again and being divorced?—I beg your Grace's pardon, I did not quite follow the question.

3573. My case is that if neither side alleges against the other that he or she has committed the same offence, would it not tend to persons agreeing to live that kind of live and then at various times procuring divorces—something of the same kind is not unknown in America—parties frequently are divorced from one another, and then marry and are divorced again?—Yes, that no doubt is possible, but I apprehend it would ——

3574. Is it not opening the door to a state of things which we have fortunately been free from in this country up till now?—But would it not be better that those people should be divorced than remain man and wife, each living with someone else? The tie has ceased to be sacred and respected, and when living with other persons the marriage had much better be dissolved.

3575. It would become a civil contract that they could break and renew as often as they liked?—Well, your Grace is putting an extraordinary suggestion. You mean people would come together to one another?

3576. No, a fresh marriage ——

3577. (*Sir Lewis Dibdin.*) A succession of marriages?—But that is lawful now.

3578. (*The Archbishop of York.*) But the bar of recrimination would make that exceedingly difficult now?—I do not quite follow how recrimination bears on that, your Grace, unless the people are equally culpable in their views as to the marriage tie.

3579. Yes?—Oh, in that case it would be so, of course.

3580. Then one point about lunacy. Would it not be very difficult sometimes? You say if lunacy has lasted for two years, and there is good medical evidence that it will probably be permanent, that there should be divorce. Would you admit that there are degrees of lunacy?—Oh, yes.

3581. What would you say about the case of a wife, say, who is quite harmless, and at times is quite sane, but who had hallucinations?—Oh, I would not for a moment allow divorce on any such grounds; it must be permanent and hopeless insanity.

3582. Would you confine that to dangerous insanity?—No.

3583. Would not it be very important to consider the danger of attempts to prove lunacy with a view to property?—I think that would have to be very carefully weighed in any legislation.

3584. Would it be your opinion that the matters, say, of lunacy and cruelty, being in the same degree so exceedingly difficult and delicate, should be an additional reason for keeping the judgment of such cases to a very high and expert tribunal?—Yes, exactly.

3585. (*The Earl of Derby.*) I want to take you now to the question of costs. Could you give me any sort of idea as to the amount of extra charge, I suppose there is no general rule—as to what the extra amount which is spent on witnesses over the 35*l.* is?—No, it depends very much on the case; generally one or two witnesses are enough—generally the petitioner and one or two witnesses.

3586. You spoke also of other expenses of the country solicitor?—Yes.

3587. May I take it as a general rule anybody would be able to obtain a divorce, say, 130 miles from London, from 50*l.* to 60*l.*?—I should say that is a very accurate estimate.

3588. That is about the lowest for which a divorce can be obtained?—I think so, unless the solicitors waive their fees.

3589. Supposing these cases were heard in the county courts, probably they could be heard for half that sum?—I think that again is very accurate.

3590. Or even less?—Perhaps less.

3591. Now, has Sir Lewis Dibdin in asking questions suggested that cases would be slipped through in the county courts that ought not to get through owing to the non-interference of the King's Proctor? Do you think that is so?—Yes, I do.

3592. But surely the King's Proctor would exercise the same facilities as he does at the present moment in London?—I think the judges of the county courts cannot have the acumen and skill and experience that the High Court judges have in detecting the signs of collusion.

3593. But as I understand from Lord Gorell, as a general rule it is not the judge who sends the shorthand notes to the King's Proctor; it is some person who suggests outside, and may, perhaps, in some way be connected with the case, who suggests to the King's Proctor he should ask for such notes?—No doubt that is often done.

3594. Would not that equally hold in the county courts?—Yes.

3595. Would it not be almost more likely to be so, because people in the locality might have some spite against one or other of the parties?—Yes, that may be so.

3596. Therefore, there is just as much reason to suppose that a case that ought not to slip through would be brought to the notice of the King's Proctor as at present?—As much reason as regards outside influence, yes, but not as much reason as to the inner jurisdiction of the court—the judge himself.

3597. But as a matter of fact, the judge very seldom does bring such a case forward?—I was under the impression it was not infrequent.

(*Chairman.*) In these undefended cases it is very rarely that you have any ground for saying this case must go to the King's Proctor. It is rather more a case where there is a fight.

3598. (*The Earl of Derby.*) Sir Lewis also asked whether shorthand notes would not be enormously multiplied, and you agreed with him that the number of cases would be multiplied?—Yes.

3599. Would not that mean, from your experience, that the multiplication is due to the number of people who, under the present circumstances, cannot afford to get relief being then able to do so?—Certainly, my Lord. As I understand it, the proposal that the county court jurisdiction should be granted and limited to poor people would amount to this, that the cases that would come into the county court are cases which otherwise would never come into court at all.

3600. Then the multiplication of shorthand notes you do not look upon as an evil. Would you look upon it as being a proof that cases which at the present moment cannot be brought before the court owing to want of money would be able to be brought before the court?—Yes, but as to the shorthand note it would increase the expenditure considerably. The transcript of a shorthaud note is more or less a costly thing.

3601. Bnt the expenses would mean that the present people who cannot get relief would be able to obtain it?—Yes, certainly.

3602. Only one other question as to the curious case you told us about being held to be collusion where there was a settlement. Am I right in thinking that in Scotch law the judge has the power to make arrangements?—Pecuniary arrangements as between husband and wife?

3603. Yes?—Oh, that exists in English law. There is power to direct a settlement on the wife.

(*Chairman.*) In England, after a decree nisi, the court has power to vary a settlement. I think Lord Guthrie said there was a difficulty with regard to that in Scotland.

3604. (*The Earl of Derby.*) The court has power to direct a settlement, also to vary a settlement, and they have power to compel the husband to settle so much

money according to his means upon a wife, or to pay her so much a week or month?—Yes, so that the pecuniary arrangements as between husband and wife are fully provided for by our court, even extending to directing the registrar to execute the settlement for him as his act and deed if he refuses to do so.

3605. But the case of collusion you mentioned was a voluntary act on behalf of one party notified to the other party?—Yes.

3606. Could that be made compulsorily by the judge?—I do not think it could have been.

3607. (*Chairman.*) Why not?—A settlement on the child? You can vary the settlement. Can you order a provision for the child?

(*The Earl of Derby.*) I ask it because it seems to me such an extraordinary thing that that should be a bar to a divorce—a thing arranged voluntarily which, as a matter of fact, the judge could have done after a decree.

(*Sir Lewis Dibdin.*) Is not that a distinction between before and after the decree?

3608. (*The Earl of Derby.*) But it was disclosed to the judge?—Oh, yes, Sir Francis Jeune was informed of it in opening the case, or in dealing with the case, but I do not think he could have made that settlement, exactly

3609. (*Mr. Rufus Isaacs.*) It was a settlement on the child?—Yes.

3610. (*Mr. Burt.*) Following up some of the questions by his Lordship, I should like to ask this. I understood you to be of opinion that the divorce cases should not be transferred to the county courts?—I think, sir, the evils of a transfer to the county court are greater than the evils of leaving the matter where it is. But, of course, there is a great deal to be said on both sides of the question.

3611. Did you draw a distinction between the undefended and the defended cases?—Oh, no. Of course, there should be relief whether it is undefended or defended. The fact that it is defended should not deprive a party of relief if he is entitled to it in fact.

3612. I suppose, as a matter of fact, the cost of witnesses, and such like, in bringing cases to London, make application practically prohibitive so far as the poor and working classes are concerned?—I think there is no doubt, sir, that, as far as the actual working classes are concerned, the present cost of divorce is prohibitive.

3613. Then have you any suggestion to make to afford these facilities, in the way of diminishing the expenses?—I am afraid I have not, sir.

3614. (*Sir George White.*) You admit, I suppose, the great hardship under which the poorer classes suffer?—Oh, yes, Sir George, that is obvious—a great hardship.

3615. And the views you give as to the additional grounds upon which you would grant a divorce, such as desertion, and cruelty, and insanity, would increase that hardship by accentuating the difference between the well-to-do and the poorer classes?—There would be more available cases of divorce, and only the same opportunity of taking advantage of them, you mean?

3616. Yes?—I suppose that would be so.

3617. You do not object to making divorce easier for the wealthier classes?—No.

3618. But you have no suggestion to offer by which it can be made easier for the working classes?—Oh, I beg your pardon; my suggestion applies to the working classes just as much.

3619. I understand you are against affidavits?—I think the evidence given by affidavits would not satisfactorily deal with divorce cases.

3620. And you are not in favour of the general extension of the cases to the jurisdiction to county courts?—No, generally speaking, I am not.

3621. And you believe no satisfactory justice can be obtained unless it is paid highly for?—I do not think I went quite so far as that.

3622. I took a note at the time. What you said was that, if divorce is to remain on its very high plane of standard, it must be expensive?—That, unless the strictness is to be relaxed under which divorces are granted, it must always be a costly matter.

3623. Then the summary of this evidence appears to me at least to still prevent the poor from getting their remedy. That is to say, if you will not admit the value or the general acceptability of county courts as courts to try these cases, or the taking of affidavits to reduce expense, what other means can you suggest by which the advantages—if you consider them advantages—of divorce, in many cases, are to be brought to the reach of the poorer classes?—I am afraid I am unable to suggest anything.

3624. That is what I say, for increasing facilities for divorce for the poor and the rich you have no suggestions to offer——?—Well, I cannot suggest any satisfactory means by which divorce can be made cheap and easy if the present standard of evidence and so forth is to be maintained.

3625. That is to say, the evils, in your judgment, which would result from adoption of any of these other plans, would be greater than the advantages that would accrue?—I think so. That is my view.

3626. Then I noticed you said, with regard to publication, that while you did not believe it was any deterrent against the evil practices themselves, in your judgment it did hinder divorce suits being brought?—It does not hinder them being brought; but I think it multiplies the difficulty of getting evidence in them.

3627. You said you had been asked on many occasions whether it was possible to arrange that no report should appear with regard to a case?—Oh, yes, that is so.

3628. And as I gather, that sometimes prevents litigants carrying their cases forward?—I did not intend to imply that was usual. It has happened. I have one case in my mind now, but it is very seldom; but I think the difficulty in getting evidence is increased in very many cases.

3629. Then referring again to the question that has been put to you several times already: there should be a substantial difference between the lapse of a man and of a woman with regard to giving divorce. That, as I gather, is based entirely on physical grounds?—I think so, yes.

3630. You take no heed to any moral consideration, and therefore you still support the different standard of morality between men and women; is not that the result?—Yes, I think so. You are putting it rather strongly against me from a conscientious point of view, but I think that is not far away from the conclusion which I draw.

3631. Then another statement you made, and I should like to know whether it is really based on experience, namely, that a man will not, in a hundred times, abuse the marriage tie unless there is a fault on the part of the wife?—That was not my opinion. That was a portion of Dr. Johnson's extract. I do not go all that length with the learned doctor.

3632. (*Mr. Rufus Isaacs.*) I only want to ask you one question. I heard you saying something about the King's Proctor and the difficulty of intervention. You have had, of course, a considerable experience of cases in the courts?—Yes, we have had a good deal.

3633. In the Divorce Court?—Yes.

3634. In your view, speaking quite frankly about it, are not there a number of cases which do slip through, which are really collusive cases, and which the King's Proctor does not detect?—I do not think there are many cases, sir.

3635. There are some, are there not?—I suppose there are. I suppose the fact that these frequent interventions which succeed show us there must be cases (I think one must necessarily draw the inference) in which no intervention takes place where collusion might have existed, but I do not think there is a large proportion.

3636. No, I am not suggesting there is a large proportion, but there are a number?—No, I do not think so, sir. May I ask what you mean by "collusive" exactly, for this purpose?

3637. I should think that in your experience you would know?—Well, I do not think that there are a large number.

3638. That is a question of proportion?—Yes.

3639. What I am asking you to tell us is whether, from your experience of the courts, in cases which have not come under your actual knowledge—not cases you have been in, but cases in which other practitioners have been acting, there has been really collusion, but it has not been detected by the King's Proctor. Is there any doubt that that does happen in the Divorce Court?—No doubt it happens, in certain cases, but I do not think it happens in anything like a large proportion of cases.

3640. No, I do not suggest it does?—Not to the extent of being in any way a scandal.

3641. If collusion is an objection to a divorce, whether it is found out or not, it ought not to be happening?—That is so.

3642. And the King's Proctor—this leads me to another question really—is not there always watching cases, is he?—No.

3643. He is not a sort of detective agency, always at work?—No.

3644. He has a great many other things to do, has he not?—I really do not know exactly what the King's Proctor's other duties are, but no doubt he is not always there.

3645. He does not himself move in the matter, as a rule, does he? Some notification is given to him, setting him on the track of a particular case?—Yes, I believe unless he is put in motion by somebody he does not move. Of course in all flagrant cases he is put in motion by somebody, the judge or somebody.

3646. But those must be very obvious cases?—Yes. (*Chairman.*) I think sometimes he may get his information in a variety of ways and act without, necessarily, instigation. These are questions Lord Desart will be able to deal with far better than anybody else. He is coming.

3647. (*Mr. Rufus Isaacs.*) I do not want to go through your evidence which I have not heard, but must read, but apparently from the answers you gave Sir George White, you do not see how divorce can be brought within the reach of the poorer classes?—I do not, sir—not maintaining, as I have already said many times, the present high plane of evidence and administration of the divorce jurisdiction.

3648. Do you mean the strict and rigorous proof that is required?—Yes.

3649. I do not follow otherwise what there is different in divorce cases from any other?—This; I would submit that a divorce hitherto has never been granted except on investigation of the case by a skilled judge the business of whose life it is to hear these cases.

3650. The investigation must necessarily be somewhat scanty in an undefended case that takes 10 or 12 minutes?—Well, it has to satisfy him.

3651. But it means nothing is brought to his knowledge that demands his particular vigilance?—Yes, and presented by counsel of standing, who, I think, would not present a case of gross ——

3652. No, not a case where the facts are brought to their notice?—Exactly.

3653. There is an advantage, of course, to the court in being able to depend on the counsel practising before it?—An enormous advantage, in my opinion.

3654. But the real difficulty would arise in the cases where the facts are not brought before counsel?—Yes.

3655. Which, of course, must also happen?—Yes.

3656. An undefended case—the kind of case that comes before the court, in which there must have been collusion—is just the kind of case in which there is nothing said about it to counsel or the judge, and which may even be unknown to the solicitors?—Oh, quite so, yes.

3657. I do not understand why it is if it is only that objection that you could not have an administration of this justice by the county court judge who could do the same as the High Court judge—could he not—with the reservation that he has not a Bar practising before him which he knows and in which he has confidence?—Yes, to a great extent. But I think there is this further objection. I think there would necessarily be a very wide divergence in the views of county court judges, and I think that would be very undesirable. In one circuit divorce might be very easy, and in another very strict, and then there would be that divergence.

3658. That is a diversity of opinion with which we are not unfamiliar in the courts?—Quite.

3659. In other matters as well as divorce?—Yes, but marriage is the only contract so far as I know which the two parties *sui juris* cannot arrange to dissolve or vary. It stands on a different basis from that point of view.

3660. (*Chairman.*) You have been asked about collusion and intervention of the King's Proctor. Do you know that the King's Proctor intervenes in more numerous cases where there has been no collusion, but the party has kept back facts from the court?—Yes, I apprehend that is a more frequent cause.

3661. If the party—the petitioner—has not disclosed all the facts?—Yes.

3662. I see there were 576 undefended cases and a small number of defended cases; in all those undefended cases the witnesses go into the box, the petitioner leading them and disclose what they have to say against the other side?—Yes.

3663. You know the petitioners cannot be asked if they themselves have been guilty of adultery?—Yes, that is a cardinal rule under the Act.

3664. Do you know many of those interventions are because the petitioner has disclosed the case against the other side and said nothing against himself?—Yes, quite; and based on the fact that there would have been counter-charges if the whole facts had been brought before the court.

3665. And that is not collusion?—No.

3666. Do you know what proportion of cases of that character bear to the total of interventions?—I do not know.

3667. Collusion is where the parties have agreed?—Yes.

3668. It may be convenient to bring this out now. For 1907 the number of decrees nisi made absolute was 644; the number of interventions was 31; and the decrees were rescinded in 31 cases. That gives figures we have not had yet.

(*Mr. Rufus Isaacs.*) Then the intervention was successful in every case?

(*Chairman.*) Yes.

(*The Earl of Derby.*) But latterly there have been two cases where it has failed.

3669. (*Chairman.*) This is 1907. I do not know how many of those were cases where the petitioner had not told the whole story?—I do not know. I should imagine a good many.

3670. Would you be in favour of allowing the court or the opposing counsel to ask questions of the petitioner as to his own conduct?—No, my Lord.

3671. You know the judge cannot do it; and, therefore, he may have to pass a case that should not be passed?—Again, I think that is a less evil then making a man or woman commit perjury on the subject, because I apprehend the answer would never be a true one.

3672. It might be?—Well, if the instance was very glaring it might, but I think it would be an enormously difficult thing to convict a man of perjury for an answer given under such circumstances. The jury would strain every effort to say a man is not bound to give himself away to that extent.

3673. One other point. In answer to his Grace, the Archbishop, you dealt with the question of a wife who might have conscientious objections to a divorce, and who sued for a judicial separation?—Yes.

3674. I should like to ask you if there were grounds for a divorce, and a separation only was asked for and obtained, whether it would be your view that the respondent in such a case should have the right to apply that the decree should be made into one of divorce?—That would be a case, my Lord, of a husband placed by his wife in the position that because she did not care to marry again she would not allow him to do so?

3675. That is my point?—No, if the decree of judicial separation still stood and existed, I do not think he ought to have that power.

3676. Would not you give him the power to turn it into a complete divorce, and take away the judicial separation if he chose?—No, not if he were the guilty party, and judicial separation still existed.

3677. But you are objecting to judicial separation existing at all?—Yes.

3678. Well supposing it were maintained to an extent to meet the point put by his Grace, would it not be right, in your view, that the respondent should have the right to have the decree made absolute against him?—I suppose where one party is guilty and the other innocent the guilty party ought not to choose the stick he is to be beaten with.

3679. That is going to the point that separation is not a good thing?—Yes, it is very difficult, and would be very exceptional, but if there was ——

3680. It seems to follow if you think separation is a very bad thing. In a case where grounds for divorce exist—you have already said you would give the right to divorce ——?—Yes.

3681. It seems to follow that you should leave the respondent the right to say: If you choose the lesser I will ask for the higher?—But would not the objection of the wife, as suggested by his Grace, the Archbishop, be exactly the same? She objects to divorce, and she would not be relieved. She objects to the dissolution of the tie altogether.

3682. It only suggests to me that if she is relieved of the necessity of asking for it it could be put upon her by the suggestion of the other side?—I do not know, my Lord. It is a very difficult point. It is a case that would so seldom occur.

3683. It is mentioned in some of the foreign codes, and some of the evidence, and that is why I asked the question?—I should have thought not. I should have thought if there was a decree of judicial separation the guilty party ought not to be able to change it into a divorce.

3684. We have had desertion cases mentioned where the respondent has disappeared to foreign countries. Have you met with those cases?—Yes.

3685. To the colonies and America?—Yes, I have two cases in my office now, one where the respondent is in Canada, and we cannot find him, and another in Australia.

3686. I should like to know what your view would be about those cases being treated as grounds for divorce simply on the ground of desertion?—Where a man has gone to the colonies without the wife's consent?

3687. Yes. In many cases they cannot be traced?—I think that would be desertion.

3688. And should be alone a ground for divorce?—Yes, after two years, I should say.

3689. (*The Earl of Derby.*) May I ask one small point? You said it often happens that, after the information with regard to the cost is given, nothing more is heard of the proceedings?—Yes.

3690. Can you give me the proportion of cases not proceeded with to those proceeded with?—Oh, very few; generally speaking the matter proceeds.

3691. It does?—Oh, yes. It is quite an exceptional thing; we get them sometimes, but it is quite an exceptional thing that we are asked to quote a price and then the matter does not proceed.

3692. You said, in your proof, often?—Did I say often?

3693. Yes?—Well it is not frequent.

3694. (*Chairman.*) I suppose solicitors in the country do know, roughly speaking, what the costs are?—Yes.

3695. And it is only an occasional solicitor who wants to ask you?—Yes.

(*Chairman.*) I ought to thank you very much on behalf of the Commissioners for the excellent way you have given your evidence, and the valuable information you have given.

Mr. EDWARD HERON-ALLEN called and examined.

3696. Are you the senior partner in the firm of Allen and Son, 17, Carlisle Street, Soho, solicitors?—Yes.

3697. Are your firm solicitors to the city of Westminster?—Yes.

3698. And you are clerk to the vestry of the parish?—Yes.

3699. And clerk to the commissioner of taxes, and you hold other appointments?—Yes.

3700. You have yourself come forward to give evidence before the Commission?—Yes.

3701. I believe your practice is a large one?—A very large one, but not in divorce.

3702. I was going to ask you. As a firm you do not practice much in the divorce court?—No.

3703. You have also mentioned in your proof that your firm was founded in 1788?—Yes.

3704. And having descended from father to son you have a large family connection?—That is so.

3705. And so you frequently get cases in which questions of divorce have to be considered?—That is so.

3706. As your proof deals largely with the question of publication I will ask you first what is your view about the desirability of publishing cases tried in the Divorce Court?—It has always occurred to me, my Lord, that the greatest scandal probably existing, or that ever could exist in connection with any judicial proceedings, arises entirely out of the publication of the details of divorce cases in the newspapers.

3707. Would you explain why?—Unfortunately the ranks in the profession have been invaded, and will continue to be invaded, by a certain class of practitioners who seem to make it the aim and object of their existence to turn the practice of the divorce court, combined with the publication of details—which, the more sensational they are, the more certain they are of being published—into an elaborate blackmailing machinery. It would naturally be said that respectable solicitors would never for one moment countenance anything of the kind, and that is so, but I think that certainly the public—and I think very often the judges and the Bar—do not realise what kind of practitioners they very often have to deal with—practitioners who carry into operation the particular schemes which I have referred to in my proof. If any instances are required of how such people get into the profession I could give it, but I pass from that for the moment. One of the most striking schemes of the kind is one which I observed was referred to in his evidence by Sir George Lewis—the case in which a woman is knowingly, with the full connivance of her husband, living in sin—living as a common prostitute; or they have separated, and she is an adventuress! She may be a woman, unfortunately, of decent birth, and in cases of this kind it is not, unfortunately, at all uncommon in practice—at any rate in a practice like ours—that a man makes the acquaintance of a member of one or the other of this class of woman. In the most elementary form of the case she is walking the streets, and he goes home with her; in the other case he meets her in some place of public resort, and the matter begins with what appears to be an interesting intrigue—they glorify it by the name of romance, perhaps, but the result is the same. The relations having been established between these persons, a few days afterwards that man is visited by some subterranean person, who says, "You have at last been "discovered under circumstances that leave nothing to "the imagination, with my wife, and I propose to bring "an action against you, and file a petition in divorce, "and I want to know what arrangement you will make?" Amongst the lower classes the practice is invariably that the man says: "I am very sorry that you should be "the victim in this case, but I have long suspected my "wife was walking the streets, and I have caught her, "and I am so ashamed and unhappy about it that I want "to go abroad. Give me 500*l.* and I will go abroad." And in the vast majority of cases the money is paid—especially if, as is very often the case, the victim is a married man.

3708. Are you speaking from something you have heard, or something you actually know?—These are

circumstances that I actually know. A man comes to his solicitors under those circumstances, and the solicitor goes to the solicitor of the other man, who is generally somebody who has been previously struck off the rolls, and expostulates with him. He is met with the bland assurance that the solicitor is delighted to hear that the man is innocent as far as the fact that he knew the woman was married is concerned, but that this is a thing that his client cannot pass over. Unfortunately, in the higher class of those cases one finds that it is conveyed to the wife who is going to be the respondent, that really the husband does not mind very much, but her extravagances—and my experience has been that practically all defended divorce cases are brought about by the extravagances of the husband or wife—are going to ruin him, and he is afraid of her debts; but if her debts become paid, or she is put in a position to pay her debts, and he is relieved from the fear of being ruined, he will be prepared to look over this matter and take her back or enter into a deed of separation. Under those circumstances, naturally, the wife is in touch with the co-respondent and the co-respondent hears of it, and the chances are that he says: "How much is required to bring about this reconciliation?" and it is paid.

3709. How is this bearing on the question of publicity?—Simply this, my Lord, that were it not that the fact that all these details will be published in the papers, the victims in both those cases would simply defy the blackmailer. They would not mind his threats in the least. They would say to their wives if such existed: "It is perfectly true; I have made this lapse; "I am sorry for it." I am not—as I have said in my proof—holding a brief for the defence of adulterers, but it seems to me to be a scandal that the process of the court should be made a means by which this class of practitioners and the husband-criminals, who are hardly lower than themselves, should make this extremely lucrative living.

3710. Does that deal with the two classes of case presented in your proof?—Yes.

3711. Then you go on to say something more about some other class of cases—if a man wishes to commit adultery with impunity?—That is a case in which a man may, for some reason best known to himself, wish to live separately from his wife. He may wish to be free to live as irregular a life as he likes, and he says to his wife: "I will execute a deed of separation; "you have means of your own, and you can allow me "something"; or, "I have means, and I will allow "you something; at all events, we will enter into a "deed of separation and live separate." "No," says the wife. A woman living by herself is in a painful position, and she says: "For the sake of my children "I refuse to do this." Now, it has been known—and I have known cases in the practice of a firm with whom I am acquainted—for a wife to receive a letter from a firm of solicitors saying that they have instructions to file a petition in divorce against her unless she is prepared to enter into a deed of separation. The alternative is explained or understood. Under those circumstances she naturally — or somebody on her behalf—goes and sees this practitioner who has levelled this bolt from the blue at her, and she finds a petition is in course of preparation, in which the co-respondents named against her fall into one of two classes. Either persons in a menial position — a coachman, a groom, a chauffeur, or gardener, or else somebody in a confidential relation—a doctor or solicitor, or the clergyman of her parish. She protests, of course, her absolute innocence, and the practitioner says: "Certainly, I am delighted to hear that is so, and "you will have the opportunity of going into court "and being sworn, and seeing in the newspapers the "following morning or the same evening that you "have denied on oath that you were the mistress "either of your servants, or your doctor, or lawyer or "clergyman." Then the wretched woman, if she has the pluck to face a thing of that kind — I do not think I have personally ever known a woman face it —is placed in that position and the case fails, but she goes through the rest of her life as a woman "who got into that excessively unpleasant mess," in which her coachman or groom, or lawyer or doctor, as the case may be, was brought in as co-respondent. Under those circumstances the man who has levelled such an atrocious charge against her, finally kills any possibility of love that might have existed between them; the children, if they are of an age to discriminate at all, are disgusted and lose all respect for their father; and she enters into a deed of separation, and the man goes away and lives with his mistress opposite, or next door, as the case may be, and he can watch her at any moment, and if he has any reason to suppose a man visits her more often than he thinks desirable he can put her to all the shame and misery of filing a petition against her, and dragging her through the Divorce Court. It seems to me the position is grossly unfair from the point of view of the woman, and that in such cases the process of the court has been disgracefully used.

3712. Are you speaking only from the point of view of what may occur, or do you mean to convey that this class of case actually exists, and is incapable of being dealt with because of the fear of various charges being made?—Entirely.

3713. And published?—And published. It is entirely a question of the newspapers and posters in the evening, which confront you on your way home continually: "Clergyman in divorce," "Doctor in divorce," "A baronet divorced." It may have been an undefended case; the thing may have been disposed of in a quarter of an hour in court, and perhaps there are three lines in the newspapers, but it occupies the whole of the poster, and that is what is supposed to be the attractive feature of that newspaper.

3714. This is very remarkable, of course, and one would like to know to what extent you are speaking from experience. One might understand that your evidence was directed to one case, or something of that kind, but is your evidence directed to cases of this character that you have known?—I have in my mind at this moment three—two cases of a doctor, one of a lawyer—a solicitor. But, as I say, my practice in these cases is not very large. People only come to me when they are in dire trouble, and I do what I can to get them out of it.

3715. And you think people are terrorised by the thought of publicity when there is a charge that ought not to be brought?—A charge for which there may not be the slightest jot or tittle of supporting evidence.

3716. You think they would face that out if they could face it without publicity?—Unquestionably; but that clergyman or that doctor or that solicitor who has been made a co-respondent and has been in a defended divorce suit, and subjected to all the incidents that follow a defended suit, is ruined. People say: yes, the reverend so-and-so, or the doctor, or the lawyer got himself into a very unpleasant mess with one of his clients or a parishioner, or a patient, and people say there is no smoke without fire; and he knows that, and he is ruined.

3717. And you think they settle the matter by payment?—Invariably.

3718. Although there is no real charge against them?—Although there is no real charge against them of any kind. I have known that happen more than once.

3719. I observe, passing on without going through all the details in your proof, you say: "Cases like the "above, in which the process of the court is wantonly "abused in calm reliance of the newspaper reports, "might be multiplied *ad infinitum*." You mean to express that?—I do. I say that after serious consideration.

3720. Do you think that occurs in any of the undefended cases investigated?—I am afraid in a very large majority—well, no, perhaps that is extravagant, but in a very large proportion of undefended cases they are undefended simply because people feel it is better. Of course, in the first place, the fact of the man or the woman to whom one is married having levelled such a charge at one's head destroys love entirely, and they would sooner be divorced from such a person than go through the worry and trouble of defending a divorce case for the purpose of remaining

married to the perpetrator of the attack. And also one of the points that Mr. Griffithes brought out so admirably in his evidence obtains extraordinarily in those cases—a case in which a woman is threatened, perhaps, with a petition of divorce, coupling her name with that of a man in one of these positions; and there is no evidence against her, and she can prove that on the occasion when adultery is alleged against her in the petition she was with such and such a friend, and she goes to her and says: "My dear, I was with "you that day; it is in my diary," and she can fix it by this or that, and she says: "You must give evidence," but the friend says: "No, my husband will "not dream of letting me"; and they go so far as to say: "If you subpœna me I will say I do not know anything about it."

3721. Are you speaking from your own knowledge?—I am speaking from absolute knowledge.

3722. It prevents witnesses from coming?—It prevents an enormous number coming. Undefended cases fall into two classes—the cases that are undefended because people are afraid to defend because of the publicity, and cases in which people will not give evidence to support a defence because of publicity.

3723. Now, what do you think is necessary to prevent this?—The entire suppression of newspaper reports of divorce cases.

3724. Do you go so far as not even to publish the decree?—I would go so far as not even to publish the decree. I would not allow it to be mentioned at all. It seems almost ridiculous to say it, but I should feel inclined to put it on the same level as a birth, death, and marriage announcement. If the parties wish it to be announced that they were divorced they should notify their friends in that way. But I should not allow anything to be said about divorce cases in the newspapers.

3725. Now, we have heard it said that publicity is a deterrent to immorality. What is your view as to that?—That is not so, my Lord, and I think anybody who considers it for a moment is bound to come to the same conclusion, because persons who commit immorality again fall into two classes—those who wish to be found out, with a view to divorce ensuing and their being able to marry and live together; and those who commit immorality in a cowardly under-hand way. The latter people make up their minds and think they are committing it under circumstances in which they cannot be found out. No man or woman who commits adultery of that kind would ever do so if they thought there was the slighest chance of their being discovered and there being consequent publicity. It is not until some slip has been made by one or the other, and the petition is filed, that the idea of publicity ever occurs to them.

3726. They keep it quiet?—Yes.

3727. And in the other case they do not care?—Yes, because the man and the woman fall in love—or call it what you will—and they make up their minds they want to live together, and they go and live together flagrantly and openly.

3728. That is all you say on this part of the matter?—Yes.

3729. Another remedy you suggest has something to do with the difference in status?—Yes.

3730. Will you explain that?—I feel very very strongly that there ought to be no difference at all between a man and woman. I cannot help thinking that the persons who have expressed strong views on the subject of the difference between the sin, or the political inconvenience of the immorality, by a man or a woman loses sight of the main features of the case. It seems such an extraordinary thing to hear people say that immorality on the part of a woman is more serious than immorality on the part of a man, and it is urged that the principal reason for that is that a woman who commits adultery is introducing a stranger's child into the house, but the man does not. But he does. He does not introduce it into his own house, but he introduces it into the house of somebody else—either the house of an unmarried girl or of another married woman, and I think his sin is infinitely greater than the woman who brings a little child into the world who will, at all events, be protected. A man who brings illegitimate children into the world broadcast and says he has fallen suddenly into temptation is far worse. Of course, one has to take out the cases which, I hope, are sporadic, where women are so bad that the woman solicits the man. Otherwise, of course, the man must be the instigator.

3731. Your view is that there should be equality?—Yes.

3732. And you leave it for the wife to say whether the solitary act should be sufficient for her to apply for a divorce or not?—Entirely. I have never known a woman want to divorce her husband instantly and spasmodically on account of a single act of adultery as men very often do under the sting of outraged vanity.

3733. Well, now, the next point is this. Have you anything to say about letting the decree nisi remain; the question of discretion as to its being made absolute?—Yes, that is another of the terrible things that happen. The intention, surely, of the Legislature is that a guilty person shall be punished by the dissolution of his or her marriage. The effect, really, is to make a successful person in a divorce petition an executioner. It is left for him or her to say whether that decree nisi shall be made absolute or not, and I have actually known cases where that has been abused. There is the case I have referred to in my proof in which the woman has got a decree nisi against her husband, and the woman with whom she has alleged adultery has been forced under the protection of her husband, and, rightly or wrongly they have lived together, and the moment arrives when a child is to be born——

3734. A child of the adultery?—Yes, and under those circumstances I grieve to say I have known the woman say: "I will punish this man and this woman by "making this child at any rate illegitimate. They shall "not get married before the child is born."

3735. By not making the decree absolute?—Yes, and I have known other and worse cases in which a woman, who has been divorced by a man who has no means, and he says: "No, you want to marry this man; "pay me so much or I will not make my decree absolute;" and in that way the process of the court is turned into blackmailing machinery of the most efficient kind.

3736. At present the respondent can apply for the petition to be dismissed, is not that adequate?—No, my Lord, because when the decree nisi has been pronounced the person who wants it to be made absolute wants it to be made absolute; it sounds like a truism. But he does not want to go to the court and say, dismiss this case for want of prosecution, because the petitioner has not applied for the decree absolute. The petitioner would say, if he were scoundrel enough, "Very well, I will let it be dismissed."

3737. You think the respondent should have the right to have it made absolute?—Certainly.

3738. Or to let it be worked automatically?—It should be worked automatically. As I say further, I think the decree nisi and decree absolute should be sensibly modified.

3739. Does this part of your proof bear on the question of publicity, too?—No, that part does not. That is merely the way the practice of the court is abused.

3740. In what way, do you say, there is any abuse there?—The fact that the petitioner is left to his election as to whether to make the decree absolute or not enables him to levy blackmail against the party who is piming to be free from him.

3741. Making him pay for it?—Yes, and making it an instrument of revenge.

3742. Have you known that done?—I have known that done.

3743. Have you anything to say about collusion?—Yes, my Lord. Collusion seems to me to be a term which is very much abused. What really constitutes collusion is very difficult to define; but, though it sounds an extraordinary thing to say, I should be wholly in favour of collusion being allowed to this extent, that if a man is suddenly, confronted with the fact that his wife has committed adultery that the following should be possible. At present, in such circumstances, on that very day he must be spirited

away by his solicitor; he must be put to live in an hotel or something of that kind, and must not go near her again. He must never speak to her and must file his petition on the spot. He must take all these dreadful steps without giving her a chance of saying a word for herself; she cannot explain. He has disgusted her further by taking these steps, and if there is any kind of communication between them with a view of arranging about the children or the wife in the future, there is collusion. I mean a man may be indignant with his wife and he may say: "You love this man, but he has not a shilling in "the world, and I must do something for you;" and if that comes to the knowledge of the King's Proctor that is called collusion. I should allow husband and wife absolutely free intercourse—free intercourse in the widest sense of the term, until the decree nisi is pronounced. There should be no such thing as condonation. A husband and wife who have taken this dreadful step of filing this petition, in a moment of outraged vanity perhaps (because it is often outraged vanity which leads to a petition), should have the opportunity of discussing the matter, and then, I think, certainly in nine cases out of ten, the divorce would never come to anything. But they are held at arms length. They are like dogs in leashes at opposite ends of a prize ring, and their case is being exacerbated by their solicitor and friends.

3744. In substance, you would allow them to communicate without being necessarily treated as colluding because they did so?—Yes. I would go further and say I would allow them to live together.

3745. And yet pursue the divorce?—Yes.

3746. (*Mr. Rufus Isaacs.*) Up to the decree nisi?—Up to the decree nisi.

3747. (*Chairman.*) That would be clearly condonation?—Clearly condonation as the law at present exists, and I think the rules governing condonation should be abolished as quickly as possible.

3748. Do you mean that you would allow the divorce to go through when the people were actually living together at the moment?—If their misconduct has been of a kind that makes that possible. Those two persons, if their misconduct has been of a kind that precludes the possibility of their coming together again—that their cruelty, or whatever it has been, was so disgusting that they cannot come together again—they never would come together again between the filing of the petition and the decree nisi. But very often the filing of the petition is brought about by their friends and by wounded vanity on the one side or the other.

3749. You mean, then, if there were grounds for a petition you would not allow subsequent matters to prevent the decree going?—Yes.

3750. Although they were still living together?—I think that case would never arise, but if it could it would be an extreme one.

3751. And it could then only be if the parties desired it?—Yes, and I think that could not arise.

3752. Now, there were some smaller points you suggested amendment upon, one is that the solicitor and client should both swear to the facts?—That is as to the procedure of the court. It is unfortunately a fact that petitions are very often filed by a certain class of practitioners in which the acts of adultery that are alleged are wholly imaginary. I say this again, with full responsibility, knowing what I am saying, that a petition is put upon the file alleging adultery at such and such a place and at such and such a time, which place and time are wholly imaginary, the petitioner hoping that in the terror that ensues on the serving of the petition, the respondent, or co-respondent, will "give themselves away," as it is called, and that when the case is heard of or talked about, they will be able to collect evidence and amend the petition.

3753. You would make the client and the solicitor support the petition by affidavit?—Yes, and I would not allow an amended petition. It may be necessary to amend sometimes perhaps, though I think that is extremely unsound—I would not allow any allegation in an amended petition to be put to the court until the allegations put in the main petition had been proved, or the judge had said there was reasonable ground for putting them there. Counsel is powerless in the matter. I have heard counsel in court open to a jury the most terrible allegations against a person. I remember, my Lord, a case before your Lordship, in which a dreadful allegation was made against a co-respondent, and there was not one suggestion of evidence—not a jot or tittle of evidence to support that part of the opening, and your Lordship commented naturally on the fact later in the trial, and we were told that the witness who was to swear to that had disappeared, or had been seen the day before yesterday, or had gone away, at any rate was not in court. The jury, of course, were prejudiced, and counsel is powerless.

3754. You mean he had opened on his instructions?—Yes, and he is given a proof saying that so-and-so will say that so-and-so took place. That is opened to the jury, and there is nothing to prove it.

3755. Without counsel knowing that nobody is coming to say it?—Naturally.

3756. Do you say that is more than an accidental case?—It happens deliberately very often, my Lord, and the remedy for it is that in all cases in which by the shorthand note it can be shown that counsel have opened facts which are in his brief, but are not supported by evidence, the respondent in that case should have the petition dismissed against him with costs, and the other side should have to begin *de novo* before a jury whose minds have not been prejudiced.

3757. Then you further suggest something about the solicitor swearing to the facts in a petition when he has not proof being considered a professional misdemeanour?—I should like that to be made a professional misdemeanour.

3758. But supposing he has a witness whom he can, apparently, trust?—That would be for the Incorporated Law Society to see if he had any real grounds for making the affidavit. These people are so anxious to get a petition on the file that they will accept the statement of the man in the street.

3759. You sum up what you say by suggesting that scandals might be avoided by the suppression of the publication of matters of this sort and by giving men and women a like remedy?—Yes.

3760. You have not, in your proof, expressed any views as to the county courts, or the extension of the causes of divorce. Do you wish to go into that?—Certainly not as to the extension of causes of divorce, but, from what one knows of county court practice, it seems to me it is a hopeless suggestion, for this reason if for no other—we are talking about county courts outside London, of course. In any country place the registrar and the officials of the county court and the jury—if there is a jury—must be personal friends of one or other of the parties, and you could not get an unbiassed hearing if the jury in the county court ——

3761. Surely, the judge could transfer it to another branch?—That might be so, but that has not been suggested. Then, again, the question of taking evidence in the country and sending it to London, I think, would be more expensive than the present system, because the judge in London could not rely on evidence taken by the registrar of the county court.

3762. We have so much evidence coming from the county court judges that, as I do not find this is in your proof, I will not follow it out. But I do not find in your proof any statement as to whether you have considered the question of extending the causes of divorce?—No, my Lord, I have not.

3763. You do not want to go into that?—No, I do not, my Lord.

Adjourned for a short time.

3764. (*Mr. Spender.*) Might I ask you a few questions about the blackmail and the application to it of publicity? You would not say, would you, that the possibility of blackmail depended on newspaper publication?—I am afraid I should, sir. I do not think without newspaper publication there would be any blackmail in connection with divorce cases.

3765. Let us take the case of the husband whom you imagined; the husband who had been led astray—or entrapped, I think, was the case you put—and the

woman's partner—I suppose he would be rightly called —threatening the husband through a solicitor. Might not the consequences be every bit as serious to the husband if there was no publication?—No, I think not It would be a matter entirely between himself and his wife. Of course, it would be a very painful and a frightful position for him to find himself in, but the fact of his having made this slip and having been so trapped would not be published broadcast to the world, and would not affect him as a citizen, and in his business, and so on.

3766. But in his domestic relationship it would be as bad?—Yes.

3767. Well, that would be a sufficient lever to the blackmailer, would it not?—In many cases.

3768. And, therefore, newspaper publicity is only another element?—It is the incident that makes the original blackmail impossible.

3769. Would not you be of opinion that if publicity was barred, a man entrapped in such a case would be a subject for blackmail?—I think if it were not for the certainty of the publicity he never would be blackmailed, because he would defy the blackmailer and would not pay, He would show that the woman was a common prostitute, and he would not pay.

3770. He would not pay in the supposed case that his wife would not resent the disclosure?—The domestic side of the question, I am afraid, we must leave out for these purposes.

3771. But in ascertaining what blackmail is it is very material, is it not?—Undoubtedly.

3772. Then your objection applies to people who do not mind a domestic exposure but are afraid of public exposure?—Well, "do not mind" is putting it rather high.

3773. Well, would be prepared to face domestic disclosures?—Would be able to deal with a domestic disclosure where a public disclosure would ruin them.

3774. Does not that aspect of a public trial belong to a great variety of actions besides matrimonial actions?—I do not think any public trial is so shameful as divorce.

3775. That may be. But cannot you imagine a great many accusations, some of them far worse, brought by blackmailers—threats of actions and exposure in a public court; it is the usual lever of the blackmailer?—I think if cases were so bad as that they would be cases that would not be reported. A man might be arrested for theft or assault—they are crimes, but they are plucky crimes. They are not shameful, cowardly crimes, like adultery; the same stigma does not attach.

3776. Then you think it is the particular lever that these blackmailers can apply in these cases that differentiates them from theft and so on?—Entirely.

3777. But you would agree it is a question of degree between these cases, and that the same argument might be used to avoid publicity in a great many different classes of actions?—That would be so, but the charge of theft is not reported with—I was going to say—the salacity you often find in divorce cases.

3778. Does not that depend on whether the person charged with it is known?—Very largely; the better known and the more respectable the victim the better the chance of levying blackmail from him is.

3779. What I am really trying to get at is, whether this fact that a wrong-doer fears exposure is not in itself a salutary circumstance which attaches to a great many kinds of wrong-doing, and that in the public interest it is not thought right to suppress it?—Well he does not think when he commits the wrong, of course, that there is going to be any publicity. On the contrary he is convinced in his own mind he has not a chance of being found out.

3780. Is that a reason for protecting him if he is found out?—No, I do not say the adulterer should be protected by the Legislature, but I say the blackmailer uses the legislative machinery for the purpose of blackmail.

3781. What I am suggesting to you is that that is a possibility inherent in almost all kinds of wrong-doing?—But the others do not matter so much.

3782. You say a special line is to be drawn between these kinds of offences?—It is admitted, I think, that adultery is one of the most cowardly and detestable crimes a man can commit.

3783. But you have said that there are a good many charges, though not reported in detail, the mere mention of which may be a very damaging matter?—I cannot imagine any case so absolutely damaging to a man from every point of view as to be a co-respondent in a divorce case, unless, of course, he does it with his eyes open, with the view of taking the woman from a situation which is intolerable with a view to marrying her.

3784. You do not think there ought to be publicity?—I am only calling attention to the fact that because the publicity is certain to ensue it is made use of for the purpose of extorting money.

3785. Now, cannot we get at that consequence, or mitigate that consequence, in other ways than that of bringing less publicity to these actions. For instance, you say there are a considerable number of solicitors who make use of these cases, and practise in these cases. Is not there a possible way of dealing with a solicitor short of shutting the courts of justice?—I am quite sure there are a very vast body of solicitors (and I think I can speak for the body), that would say if anybody could devise a means by which such practitioners could be dealt with, there is no money that the solicitors of London would not subscribe for the purpose, but there is no way of dealing with them.

3786. Then, the position is this. It is because a way cannot be found of dealing with solicitors that we have to take the heroic remedy of closing the courts?—I am afraid that if there were no solicitors to do these things the blackmailers would do them themselves; but the idea of there being no solicitors is a counsel of perfection.

3787. You propose, I understand—and I think it is necessary from your argument—not only to exclude the newspapers from the courts, but to prevent the publication even of the facts?—Yes.

3788. You would not have the fact recorded that the parties had been divorced, and that so-and-so was co-respondent?—Well, I cannot help thinking that I have rather modified my view about that. I do not see so much harm in that, but, I think, if you suppress any of it, you should suppress the whole. It is a matter of news, and if they wanted it announced they could announce it; merely a news item.

3789. Would you prevent the newspapers from alluding to the fact afterwards, that the man had been a co-respondent?—Oh, certainly.

3790. So, at the end of all this sequence, you have no guarantee that the blackmailer will not be able to go to the newspaper and say this man has been a co-respondent?—No, you misapprehended my last answer. I should make it contempt of court for a newspaper to refer to the details of a divorce case, either when in progress or when it is going to be heard or when it had been heard.

3791. After it had been heard you carry it to the length ——?—Of not allowing it to be commented on.

3792. Of preventing a newspaper from stating the indisputable fact that such-and-such a man, if he is standing for Parliament, or is a candidate for a public office, was a co-respondent?—I think the judges of the High Court would be perfectly competent to deal with the question as they do now when facts are alleged against a man under such circumstances as that they constitute a libel. They may be alleged under circumstances that do not constitute a libel, and a judge of the High Court could prevent facts being brought out wantonly against them.

3793. That is the point I want. You would make a newspaper liable to an action for libel if it even mentioned the fact that either a man or a woman had been a party to a divorce case or a co-respondent?—Yes, unless they could show there was some public good to be derived from the publication of the fact.

3794. That is, the newspaper would have to plead justification for even mentioning it?—Yes.

3795. And you do not think it would be a very serious matter to seal up the Divorce Court in this

way? Do not you think it would be likely to multiply divorce actions, and would greatly facilitate them?—No, I do not.

3796. You do not think it would remove any deterrent?—I do not think it is any deterrent; I do not think it is a deterrent at all.

3797. Then how does the blackmailer manage to ply his trade if this fear of exposure is not the lever with which he works?—Because, in the case I am quoting, the man thinks he is sinning with absolute impunity; there is not the slightest chance of publicity. It is only the fact that there is a foreign husband round the corner who suddenly appears, follows them home and finds out who the man is, and so on.

3798. You would hardly carry it to the extent of saying that men who resort to that kind of conduct had not some idea that they could be exposed, and did not risk it as one of the liabilities of that kind of conduct?—No, I think if they had the faintest fear of it they would not do it.

3799. Do not you think then it is desirable they should have some fear of it?—There you take me back to the same answer; they do not dream for a moment it is likely to happen. They pick up a casual stranger in the street, and the usual thing happens, but it never enters their minds for a moment that there is the slightest possibility of divorce proceedings following upon it. If men realised it (which they do not) there would not be nearly so much indiscriminate immorality in London—if men realised what a lot of these women have husbands round the corner.

3800. I do not quite follow your argument?—Well, that is so. If they knew that it would be a deterrent.

3801. If they knew it?—If they knew it it would be a deterrent, undoubtedly. But they do not know it, therefore they are not deterred.

3802. I am suggesting to you to try and realise the full consequences of this, because it means that none of the penalties that are most feared would attach to detection in these cases, and I suggest if you make the Divorce Court private, in the sense you propose, the effect must be to render the kind of offence you suggest easier, because the penalty will be even lighter than now?—But you put into my mouth—the penalty which is feared. I say the penalty is not feared. When it happens it is a sudden thing to him, it is like sudden death; a man does not fear sudden death, but it comes.

3803. A person, for instance, who was intending to poison anybody would not be deterred, you think, by fear of detection?—My experience of poisoning and poisoners is so small that I have not studied it; but I think if a man wanted to poison anybody, fear of detection would not prevent him doing it.

3804. Well, you want to bar the publication of the mere fact of divorce, and the names of the parties and the name of the co-respondent?—Yes.

3805. Is there any kind of precedent for that proceeding in any European country, or any country?—No; I believe in France the names are stated. I do not know.

3806. (*Mr. Rufus Isaacs.*) You have spoken of these cases and created an impression, rather, in my mind, that these blackmailing cases are very common in connection with divorce proceedings?—They are painfully common.

3807. Are you speaking from experience which has been brought before you?—Yes. For instance, at this moment I have in my mind two cases absolutely in point which have happened within the last six months.

3808. Cases which have not come to trial, I suppose?—Oh, no, the man has paid.

3809. Cases in which the man has paid?—Yes.

3810. In order to avoid the publicity of his offence?—Yes.

3811. Take, for example, the last two years: how many cases of the kind have actually come before your knowledge of which you could give particulars?—Well, I really could not tell you, but I should be certainly within the mark if I were to say half a dozen. There is a gentleman in the room at this moment who could probably tell you a good deal more on the subject, and whose experience is very much wider than mine, because, as I have said, we do not practise in divorce; I object very strongly to the thing.

3812. It is exactly that which makes your evidence, at any rate, to me, seem startling. You say your experience is small in the divorce court?—Yes.

3813. How many cases, for example, have you had the last two years?—Well, curiously enough, I made a calculation about that a short time ago, and within the last ten years I should think I have been consulted in about 50 divorce cases, and I have only been in court once; I mean in a defended case.

3814. Have they always been for the man?—They have always been for the respondent. I have never filed a petition in a fighting case—in a defended case.

3815. When you speak of 50 cases, are they all defended cases?—None of them. I beg your pardon; I did bring one defended case to trial, we could not prevent it; but in all the other cases we have arrived at a *modus vivendi*, and the divorce case has been quashed before it arrived at the court.

3816. In those cases, as I understand, there was ground for the complaint against the respondent?—No doubt, very often; not always, but very often.

3817. Do you mean in some cases there has been allegation of adultery against a man for which there has been no foundation?—Yes.

3818. And with respect to which he has paid money to avoid going into court?—Yes; I have a case in my mind—I cannot say it is in my own practice, but in the practice of somebody I know. You will readily understand I cannot identify myself with these cases, but I assure you I do not quote a case or a single incident on which, if there is any doubt in the minds of any member of the Commission, I am not prepared to obtain and put before his Lordship such documents as will enable him to assure the Commission that this is absolutely true.

3819. Are you prepared to do that with reference to the cases which you have enumerated to us to-day?—I should be quite prepared ——

3820. I think you said half a dozen cases during the last two years?—Of course, professional secrecy is a thing one has to attend to, but I should be prepared, in one or two cases—there are cases where one cannot even do that, but I should be able to substantiate every case I have alluded to.

3821. You say you can establish every single incident of what?—Well, for instance, the case of a man followed home, and the man coming subsequently for money; the cases where petitions are filed without any sort of evidence alleged, and where counsel have been made to open cases the evidence for which does not exist, and so on.

3822. Well, it is just exactly the particulars that are necessary in order to test this. You have told us 50?—Yes.

3823. During the last 10 years?—Yes, that I have been consulted in.

3824. In those 50 cases in 10 years how many come within what you would describe as the blackmail category?—Well, half a dozen, I should think.

3825. Half a dozen out of 50?—Yes. That is in a small divorce practice.

3826. And in each of the six cases there has been a money payment?—Yes.

3827. In order to prevent the suit proceeding?—Yes.

3828. And, of course, it would follow from that that in each of those cases you have been acting for the husband?—For the person who is attacked.

3829. For the husband?—I do not quite ——

3830. That is what I want to know?—Oh, yes, yes; of course it is always a man.

3831. (*Chairman.*) It does not follow that the man is the husband. I thought you meant an attack by a husband upon the man ——?—Yes, I was confused by it.

3832. (*Mr. Rufus Isaacs.*) I mean in each of the cases you have been acting for the respondent, who was the husband sued by the wife?—No.

3833. Is that right?—Oh, no. Are you talking about the half dozen cases of blackmailing?

3834. Yes. I do not want to get a case where this has not happened, but the half dozen cases?—In the case of the half dozen I never came across the husband or the wife; it is the outsider—the husband of the woman who is the head and front of the man's offending, and he has to be paid; they do not arrive at divorce.

3835. But what it means is that it is the husband who has committed the offence; that is to say, it is a man who consults you?—Yes.

3836. Who has a wife ——

(*Sir Lewis Dibdin.*) You mean the co-respondent?

3837. (*Mr. Rufus Isaacs.*) Not necessarily. It does not seem to me to be at all necessary, and that is what I want to get at. I do not think he does mean that?—In the six cases of blackmail I am speaking about there is the case I referred to particularly this morning in which, in the practice of a firm with whom I am acquainted, a petition was filed, and I was acting for the husband, in which there was no evidence against him at all. Not for the husband, I beg your pardon; I was acting for the co-respondent, and there was no evidence against him at all, and he paid a very large sum of money, and it was called "paying the wife's debts," in order that she might be reconciled to her husband and go back; and in the six cases I have been just consulted by the man, whether he is married or not—he need not have been a husband.

3838. But it is always a man?—Yes, of course.

3839. And, of course, it must be a man who has some means; otherwise there is no object in it?—Clearly. He is carefully followed home by the agent of the wife, or the husband as the case may be, and they find out all about him, and if he is not worth it, well, they do not go any further; they wait for another.

3840. And it may be for fear of being made a co-respondent in the suit?—Yes.

3841. Or also of its being brought to the attention of the wife?—In most of the cases the man is so worried and bothered about it he confides in his wife, and I have known a case where the wife was good enough, out of her private means, to pay the blackmail demanded of the husband rather than see him ruined by being made a co-respondent in a divorce suit.

3842. So far as your experience goes, there seems to be a very great objection to the facts being published?—That is so.

3843. That would show, would it not, that the publication of the facts acts, at any rate, as some kind of penalty?—As a penalty, yes.

3844. To the person who has committed the offence?—Yes. That is what is in the mind of the man who asks for the money. He says: "Pay me the money or "you shall suffer this penalty"; it is *ex post facto*. He does not say: "If you go and sin I will come down "upon you and you will be punished as an adulterer."

3845. If that takes place, and the facts come into court, and there is no publication of any kind, the result is the offence has been committed but nobody knows anything about it?—Nobody knows anything about it. The husband probably gets his divorce, which is very useful, because he could not do it again after that, but the co-respondent would go free, as he does not know she is a married woman.

3846. Have you ever considered the application of the criminal law to these persons who are pursuing blackmail?—Oh, yes, indeed, and they snap their fingers at it.

3847. Your position being, you would advise a client to take it into court?—Yes, that is the doctrine of bluff, and they have said, "Oh, certainly." I said to a solicitor once: "Your client is simply a common black-"mailer"; and he said, "Yes, have him arrested and "take him to the Old Bailey." You cannot do it.

3848. You cannot do it, of course, because he will not face the publicity?—Yes, and the blackmailer knows that, of course.

3849. You have spoken of a number of solicitors who carry on this kind of practice. Can you give an idea how many there are, to your knowledge, who do this kind of work?—Well, I know, personally—I have had personal relations with three, whom I can call to mind immediately. They were a long time ago, but I remember a case of a man who was struck off the rolls, after serving a long term of imprisonment many years ago, and after he finished his term of imprisonment he came back and practised in this sort of case—black-mailing cases. But there are a great many solicitors who are past their work, or never had any, or have taken to drink, poor wretches; and a man comes out of prison, and says, "I will give you 100*l.* a year, "and I will be your managing clerk," and he is, and you can never see the solicitor.

3850. Do you know of any cases of this kind that have been brought before the Law Society?—No, you cannot bring them before the Law Society, because you cannot disclose the facts and cannot find a client who will go into court and tell the story against himself.

3851. But the blackmail is not confined to the publicity in the newspapers?—No, it does not get as far as that. The blackmail passes before the publicity takes place.

3852. But his threat is not only with regard to the newspapers?—Well, that is underneath; that follows as a fact—the publicity in the newspapers; that is what he counts upon.

3853. But disclosing the information may be a very great threat also to a person, without publicity in the newspapers?—It may be, but the disclosure is only made to one or two people, for instance, the man's wife, who will be very sorry for him perhaps—her motherly instinct comes in and she is very sorry for him; she cannot bear the thing itself, but it does not make her hate him; and they live it down and are quite happy after—though I cannot imagine it is quite the same thing.

3854. Is this your sole reason for saying publication of divorce cases should not be allowed in the papers, this question of blackmail?—And the effect on young persons.

3855. That is a question of details?—Yes.

3856. Assuming the indecent details are published?—But it is very difficult to say where the line of demarcation comes between decency and indecency.

3857. Is it?—Do not you think so?

3858. I should have thought not?—The evidence you see every day of the butler looking through the keyhole and "describing what takes place"; a child of 16 or 17 is absolutely innocent, and I have had it said to me, "What does take place? What can they do which is so wicked?"

3859. But there is a great deal that is published that you cannot prevent of that character?—Not very much. Excepting in divorce cases, where do you ever get publication of details of that sort?

3860. Well, I can think of several. But that kind of report only takes place in what is called society scandals. You do not see this report in detail of divorce cases, do you?—Oh, really! Surely you do. Take any Sunday paper; I do not mean any Sunday paper, but there are papers that make rather a speciality of it; a paper like—I had better not mention the name—but there are Sunday papers that make a very great speciality of the most insignificant divorce cases being heard.

3861. Now, assuming that the court had power to deal with a newspaper editor who allowed details to be published that the court thought wrong, which at present it does not, then your objection would be confined to the opportunity it gives for blackmailing?—Yes.

3862. Does it occur to you that the non-publication of the divorce proceedings might act with considerable injustice to either the respondent or the co-respondent?—No, I cannot conceive on the spur of the moment any case in which it will be for the good of a man or a woman to have details of this kind published about them. I do not know what is in your mind, but I cannot conceive the possibility.

3863. I will tell you what is in my mind. There may be cases in which there is something to be said on behalf of the respondent and co-respondent in extenuation, which would not appear at all if all you get is the fact that the divorce has been granted?—I cannot help thinking that would be carrying the hypothetical wrong or right very far.

3864. Well, I do not want to argue it with you, but I rather gather from what you say, in your view, there could be no extenuation of the fact?—No.

3865. You rate the offence as a very grave one?—Yes, I do.

3866. And you expressed it, you cannot conceive anything —— ?—More cowardly.

3867. The expres ion you used was that you could not conceive any greater stigma on a man than when he had committed adultery?—Yes.

3868. That is hardly the generally accepted view of the world, is it?—I am afraid it is not, and I cannot think why.

3869. I was going to suggest that many a man who would not object to the stigma of adultery would strongly object to the stigma of obtaining money by false pretences?—It may be so. I know which I should sooner ask to dine with me, or claim as a personal friend.

3870. Yes, I understand that, but your view is by no means the usually accepted one, is it?—No, I believe not; but I believe a man commits adultery, either wanting to be found out or not. It is not wanting to be found out that is horrible. I can understand a man taking a woman right away, meaning to marry her.

3871. Does it occur to you what you were suggesting would act as giving the greatest protection to the man who has committed what is in your view the greatest offence?—Yes, but one cannot help that.

3872. But that would be the effect of it?—That would be the effect of it.

3873. And your suggestion is that that should be done in order to protect persons who had committed this offence from being blackmailed?—Precisely.

3874. It would make a man care very little about committing adultery if you were to give no publicity to it, would it not?—I do not think you could say that. I think that is carrying it too far. There are undoubtedly sporadic cases where a man would say: "Oh, nothing would happen"; but remember the responsibility a man takes on himself if a woman is divorced on his account; he either has to chain himself to her for life and marry her or is disgraced for ever.

3875. That depends on the woman very much, and the social condition in which he lives?—Yes, I am only talking of the class I am familiar with—the lower-upper, and upper-middle classes.

3876. But I only want to understand this: that the effect of what you are proposing to do, notwithstanding how you view adultery, is to give the most complete protection of the adulterer?—As far as publication is concerned, no doubt.

3877. Is not that the most serious thing he has to fear?—That may be a very frightful thing, and is a ghastly thing for a few weeks, but the other result of having to chain himself to a woman for whom he has no respect is much greater.

3878. You say it may be a serious thing for a few weeks; but why, if the offence is so serious, and to be looked upon so seriously, as you say?—I am talking about the publicity. It is a very serious thing for him for a few weeks as everybody is talking about it, and for the rest of his life because his own family and friends will talk about it.

3879. But why should you protect him if he has committed this very serious offence?—That is what I said at the beginning; I do not argue that the Legislature ought to protect adulterers, but that it ought to take steps to insure that the process of its court is not used for the purpose of levying blackmail against people who may have committed this offence.

3880. Do you know of any case which has ever been brought before a Divorce Court in which complaint has been made of this?—No, it would not be; because the fact of its coming to the Divorce Court means he has defied the man.

3881. I do not quite follow; do you know of any cases in your experience where an application has been made to dismiss a petition because it is an abuse of the process of the court, on the ground that there is no foundation for the charge?—Surely that is the argument in every defended case, that there is no foundation for the charge.

3882. You are not following the point. It is one thing to have a defence to a charge, but I want to know do you know of any case in which an application has been made to either one of the judges of the Divorce Court (an application that can be made in chambers) to dismiss a suit on the ground that it is brought for nefarious purposes, and there is no foundation for the claim?—No, I have never heard of it.

3883. Then you do not know if such an application could be made?—No. I cannot understand the application, because a man would have his facts all cut and dried. It is a fact you would ——

3884. That is a case where the offence has been committed, no doubt, but I was dealing with the class of case where offence has not been committed?—Yes.

3885. And in which it is known by the petitioner that the offence has not been committed, and the suit is merely instituted for the purpose of blackmail, which, of course, might be a very serious thing to the co-respondent?—Yes.

3886. A man in a public position, for example?—Yes.

3887. The mere fact that there is a suit pending against him would be a very serious thing?—Yes, and my experience is that he pays; he does not go into court.

3888. Notwithstanding that there is no foundation for it?—Notwithstanding that there is no foundation for it.

3889. I think I understood you to say you only know of one such case that came under your notice?—Yes, I know of one such case. I was trying to think if I know of any other. Yes, I can remember another one now, in which a man paid about 4,000*l.* to a country solicitor for the payment of the debts of a lady whom the client of the firm to whom I refer met casually in London. He began an intrigue, and then this process of levying blackmail on him began from the country.

3890. Supposing the husband became aware that there had been an intrigue between his wife and, say, a client of yours, and he brings a suit, and it is compromised by the payment of money; would you like to call that a blackmailing case?—I should not like to say without the papers before me. You cannot generalise like that. You cannot possibly make a general answer like that. You must know what has gone before.

3891. You do not necessarily come to the conclusion that because it is compromised by a money payment that, therefore, it comes within your category of a blackmailing suit? That is what I want to know?—It is a very difficult question to answer. I can hardly imagine a case in which I should not call that a blackmailing suit.

3892. I rather understood that that was your view?—That is my view, but I take it from you, there may be cases in which a man may let his wife off on payment by the co-respondent, and still be an honourable man.

3893. Then I wanted to ask you about witnesses. Did I understand you correctly to say that you know of cases in which witnesses have refused to appear because they have been afraid of the publication?—Yes.

3894. Are those witnesses who are quite innocent, I mean not in any way involved in the suit?—Oh, no, not in any way involved.

3895. Merely persons who could prove —— ?—That a particular person was at a particular place at a time when they were supposed to be somewhere else.

3896. There is a general dislike among people to come forward as witnesses in a good many cases?—Yes, that is so.

3897. Do you mean it goes further?—Very often a woman will be quite prepared to come forward and say: "Yes, you were with me on such-and-such a day, and "this cannot be true," and the husband will say, "No, "I will not have you mixed up in a nasty mess of this "kind—I do not like it, you must not do it." I have known that happen.

3898. Supposing she is subpœnaed. Have you ever known that happen?—Then you get an excessively unwilling witness.

3899. And it makes you very reluctant to call that witness?—Yes, indeed.

3900. But do you think it is the publication that causes dislike to come forward?—Entirely. If witnesses of that kind could be heard *in camera*, and a woman who is accused could say: "No, on such-and-such an "occasion I was at a certain person's house, and slept "there that night," if she could go to the judge's private room and swear to that it would be all right; but then you do not get cross-examination.

3901. It would be very dangerous to the person against whom the charge is made that the witness should go into the judge's private room and make a statement there?—Yes.

3902. You do not suggest that should be done?—No, but what I mean is, if evidence could be admitted without publicity, it would often be forthcoming, but now it is not.

3903. Are you speaking of cases that have come under your notice like that?—I have a case in my mind now—that has been in my own practice even.

3904. How often have you known a witness refuse to appear because of the fear of publicity?—You must not take me as being absolutely literal, but I should think in almost every case where one has had to collect evidence for the defence of a person one has found one or two persons who might have given evidence, and who have said, "No, do not bring me into it; I cannot "bear it; it is too horrible."

3905. But you do find that in other cases besides divorce cases?—I dare say.

3906. Some people object to wasting time waiting about in court?—Yes, but the atmosphere is not the same.

3907. No, it is more objectionable, no doubt. Then I want to ask you one other matter. You put forward a view which, as I understand it, amounted to this; that, in your opinion, although a husband and wife are living together, cohabiting right up to the trial, and during the trial, that the court should, nevertheless, have power to grant the decree nisi?—Well, that is the *reductio ad absurdum* almost of what I really did want to bring before the Commission; that is, that I do not think the fact of their having come together and tried to adjust their differences, and even cohabit together after the filing of a petition—I do not think that should act as a bar. Of course, they would very soon find out—in a few days or a few weeks—if that was impossible, and then they would part again. But I should not put a limit to it.

3908. You are speaking of two different things, are you not?—No, I think not.

3909. Let me suggest you are. One is, there may be some negotiation for the purpose of bringing the parties together again?—Yes.

3910. Negotiations by letter or interview?—Yes.

3911. Either by themselves or their legal advisers or friends?—Yes.

3912. That is one class of case?—Yes.

3913. That stands apart from the case I was putting to you. I understood you to say that notwithstanding they were living together up to the last moment, that in your view the court should be able to grant a decree?—If they have found it necessary to live together up to the last moment, trying to discuss the matter and to make up their difficulties, they might be doing it till the very day before the trial. It is a ridiculous picture, I daresay.

3914. You might have a suit going on, the husband's solicitor coming to see the husband and asking details?—Yes.

3915. And in another room at the same time the wife's solicitor seeing the wife and getting the details from her?—Yes.

3916. And then they are to meet together and dine together, and cohabit?—Yes, that is a *reductio ad absurdum*. That is the other extreme from this ridiculous and abominable state of things at present, that as soon as one files a petition he or she is spirited away, and they are not allowed to speak to one another again.

3917. What seems to me is that the *reductio ad absurdum* is the result of the extreme way you put it?—Undoubtedly, but I have to put it in an extreme way because it is impossible to say at what point between the filing of a petition and the decree nisi they are going to separate. I should let them communicate as much as ever they liked, and if it arrived at the point of cohabitation, so much the better; they would be all the more likely to adjust their differences.

3918. One other matter only that you mentioned which was rather strange to me. You said you had known cases in which (you speak of it rather as a practice) counsel were instructed to make statements affecting a person seriously ——?—Not practice—it has happened.

3919. That is what I want to know. I can conceive its happening in an isolated case?—It is extraordinarily rare.

3920. It may happen, of course?—It does happen, but it is extraordinarily rare.

3921. The difficulty I find is this. It may happen that counsel may open something he is instructed will be proved, and when the time comes the witness does not prove it?—Quite. As a rule he does not turn up at all.

3922. But it is by no means uncommon to find a witness' proof stronger than his evidence when he gets in the box?—Yes, but I am talking of a case where it is absolutely unfounded.

3923. I understand your suggestion is that there are cases in which this is deliberately done, with the object of the fact being opened by counsel—misleading counsel by telling him it will be proved, so that the fact may be put before the jury?—Yes.

3924. Now I should like to ask you in how many cases in your life have you known that happen?—Two, at this moment, occur to my mind. In one I remember a counsel in the Divorce Court who had opened a case and asked the solicitor where the witness was who was going to prove it, and the solicitor said, "Well, he has "not turned up," and the counsel said, "I shall not go "on with the case till he turns up," and he did not turn up, and counsel returned his brief.

3925. That was a case in which he was quite justified?—You know the case, perhaps?

3926. Yes; but that was a case that led to the extreme step of counsel refusing to go on with a case?—Yes.

3927. But apart from that instance ——?—In the other instance it was a case where my own firm were concerned, and we had a most dastardly charge opened against us, and there was not the very faintest suggestion of evidence on the subject.

3928. (*Chairman.*) Are you speaking of a divorce case?—Yes. It was a case before his Lordship, the Chairman, in which the unhappy co-respondent was a man without any means and conducted his case in person, and he had such a perfectly straight and truthful story to tell that the jury threw out the case.

3929. (*Mr. Rufus Isaacs.*) But in the case you are speaking of, in which the charge was made against you in the course of the case, what ground have you for thinking that it was an absolute—or coming to the conclusion the solicitor had absolutely invented the story?—I should not like to say, in that case, the solicitor did. No, in that case the solicitor certainly did not. But in the other case I am certain the solicitor invented it. In that particular case the petitioner had paid a servant for evidence, and the servant had given that information to his solicitor, and he had put it into the brief, and counsel had to open it.

3930. But I want to deal with the particular thing that you stated. I understood that your complaint was that there were cases in which the solicitor gave instructions to counsel that witnesses would be called in order to get counsel to open the case and open particular allegations, the solicitor knowing fully that there was no such evidence, and that it could not be called?—Yes, I know one case in which that undoubtedly happened, but in the vast majority of cases the solicitor is deceived as well; but I think the solicitor, if he had taken the trouble to go into the matter himself more carefully, would have seen that the case was bad.

3931. I am speaking with a little experience. I cannot recall such a case?—You are very fortunate.

3932. That is why I want to ask?—I do not think any solicitor would dare to put a thing into your brief of that kind, Mr. Rufus Isaacs.

3933. I do not understand how it could happen. Counsel would not open a grave allegation against you or anybody else of the kind you have described, unless some attempt had been made to find out whether there was material to support it; and do you mean that was simply on one proof?—Only one proof, certainly. There is the opening allegation, and then the proof that Jane Smith will say so-and-so. There may be a Jane Smith, but she is not get-at-able.

3934. Can you say if such a case has happened within the last 12 months?—No, a few years ago, the case I am speaking of.

3935. Is that the case in which counsel threw up his brief?—No, that is the case in which I had every reason to believe that the solicitor knew he put something in the brief he could not support.

3936. How many years ago is that?—About 10 years ago.

3937. That is the only case of that kind that you know of?—That is the only case of that kind that I have in my mind.

3938. Is the solicitor still on the rolls?—I could not tell you. It is not a fair question.

3939. Why? I am not asking his name?—No, but he might be. I really do not know whether he is or not, but if I were to say: "Here is a case that suddenly "stopped and the solicitor has been struck off the "rolls since," it would be very easy, if necessary, to identify who it was, would it not?

3940. I do not know?—Well, I am prepared to say I could identify him to-morrow morning.

3941. We will leave out that one case that happened 10 years ago then. What one wants to know is for the purpose of ascertaining how frequent this kind of case is. Do you know of any other in which you are prepared to state it was deliberately done by a solicitor?—No; that is the only case in which I am prepared to say it was deliberately done.

3942. There may be cases where facts are open that are not proved after?—Yes, that is very unfortunate.

3943. Well, there is no means of preventing that?—But there is the remedy I have suggested.

3944. Which is ——?—That if by the shorthand report it can be shown counsel has prejudiced the jury by opening something which he is not able to support by evidence, the respondent, in that case, should have the case dismissed against him or her, with costs, and the case to begin *de novo*, because he has not had a fair run for his money.

3945. You know that would be ground for application to the Court of Appeal?—Yes.

3946. And you know the Court of Appeal has, in one case I have in my mind, upset the court below?—In consequence of facts opened which were not proved?

3947. Yes, and which the Court of Appeal thought might have prejudiced the jury?—Well, to go to the Court of Appeal is a very dangerous thing—or expensive.

3948. Not dangerous, I hope?—Well, it may be, you never know where you are.

3949. I do not understand, except with regard to the expenses?—Well, that is, after all, one of the most serious things.

3950. You mean it is expensive?—Yes.

3951. (*Sir George White.*) In the case of a husband conniving at his wife's adultery, for the purpose of levying blackmail, does he usually make his demand to a solicitor?—Always. Well, in the cases I have known, always.

3952. Always through a solicitor? Is it your belief that there are a large number of unscrupulous men in the profession who are always ready to undertake such cases?—Not a large number; a certain number.

3953. Then, in the cases where no publication is possible, do you consider these demands would be very much reduced, if not altogether destroyed?—They would be entirely destroyed.

3954. And your object in preventing publication is really to prevent blackmail?—Entirely. If the husband dared to go into the court and expose the tactics of the blackmailer, he has no knowledge that the woman is married and the husband would not get any costs against him. He would have a great expense thrown on him to get rid of the woman by whose means he is carrying on this particular form of blackmail.

3955. And according to your experience there is no case in which this attempt at blackmailing is exposed in the Divorce Court?—I never heard of one. Sir George Lewis said he had paid thousands of pounds under those circumstances.

3956. Is it not surprising that in no instance a man has the courage to say "These charges are made "against me ——"?—No, it would surprise me if anybody went into court who could afford to pay.

3957. One other question only. You say in the case of a witness being subpœnaed that witness would be an unwilling witness, and, therefore, might not be any advantage to the case; but why, when a witness is before the court, should not he or she speak the truth?—Well, the witness in that case is generally a lady, and the ordeal of cross-examination—you see the defending counsel has to shatter her evidence if possible, and, except in a very few cases, it is very easy to get a woman in the witness box to admit that that is her impression, but she is not quite sure. She is only telling what her recollection is, mind you, of something that happened months before.

(*Chairman.*) Thank you very much for your evidence.

Mr. THOMAS SMITH CURTIS called and examined.

3958. (*Chairman.*) Is your name Thomas Smith Curtis?—Yes.

3959. You are a member of the firm of Collyer-Bristow, Curtis, Booth, Birks and Langley?—I am.

3960. Have you been senior partner since October last, when Mr. Collyer-Bristow died?—Yes.

3961. Are you an agency firm?—Yes, my firm has a considerable agency practice.

3962. Have you any idea how many?—I think we take out about a hundred certificates.

3963. That is to say, your country clients would represent nearly a hundred?—Yes.

3964. Have your firm, both as agents, and with regard to your own personal clients, had considerable experience in divorce and matrimonial cases?—Yes.

3965. What do you think about conferring jurisdiction on the local courts?—As regards conferring general jurisdiction on the local courts, I should be against it; but if it is a question simply of confining it to poor cases, perhaps there might be something to be said in favour of it.

3966. The suggestion made is, cases of people with a small, limited income. That is more particularly the class of case?—With regard to that, my Lord, I think if the procedure in the High Court were reformed to a certain extent, that the cost would be very considerably reduced; that is the necessary cost, so that the expense in going to the county court would not, perhaps, be very much less than proceedings in the High Court. I have taken out some figures with regard to that, if they will be of any service to the Commission. In the first place I would suggest (this is in the nature of a reform of procedure) that it should not be necessary to issue any citation, but that it should be sufficient for the petition to be presented, and to have upon it a return form, or a note, that appearance can be entered, and a copy of the petition to be served upon the respondent and co-respondent.

3967. That is one of the difficulties Mr. Musgrave pointed out a while ago. Who is to file that petition in a country case?—I think it might very well be received by post in the same way that county courts receive bankruptcy petitions by post. There is no reason at all why the petitioner, if he is appearing in person (if he has consulted no solicitor), should not send it by post.

3968. How would that be served?—Assuming that it is an undefended case that would not arise.

3969. But how would it be served?—It could be served through the county court, either through a bailiff or through someone employed by the petitioner who could identify the parties.

3970. And if there were an appearance entered that would have to be entered in London?—That would be entered in London, my Lord.

3971. By post?—No, I think not.

3972. Personally?—I think on an appearance being entered the parties ought to be represented with a London address; and I cannot imagine a defended case going on between parties appearing in person. I think they must have professional advice.

3973. And that would require the presence of some agent in London?—Some agent in London.

3974. Some witnesses suggested they could go to the county court direct and leave out the agent, at all events in the preliminary stage?—Yes, but I do not think that would make any difference in costs. There is no more expense in a London agent attending the divorce registry in London than a country solicitor attending the district registry in the country. The expense will be the same.

3975. Now you have dealt with the citation and petition?—Then, my Lord, assuming that on the present procedure (I have a model bill), that the husband comes from Norwich with one witness from Norwich and bringing another witness from Northampton to London, and in that case (in an undefended case) the professional charges (that is not necessarily profit charges) would amount to 23*l.* 8*s.* 8*d.*; the disbursements, including counsels' fees and the expenses of the witnesses and court fees, would amount to 17*l.* Altogether 41*l.* 3*s.* 4*d.* I had better say first that taking these expenses down to the time when the case is set down the disbursements would come to 7*l.* 18*s.* 6*d.* and the professional charges to 9*l.* 5*s.* 4*d.*; that is, to the time when the case is set down for hearing in the books.

3976. The costs afterwards varying in every case?—There may be one witness or half a dozen or a great number.

3977. (*The Archbishop of York.*) What was the total of the last two sums?—17*l.* 3*s.* 10*d.* Now with the reformed procedure which I suggest—and that is leaving the High Court fees as they now stand and I think they are far too high—the expense of that suit would come to 9*l.* 18*s.* and I think if the court fees were reduced as they might be by 1*l.* or 1*l.* 10*s.*—1*l.* or 2*l.*, it would be 2*l.* less. From that stage, that is after the case is set down for trial, it is impossible to predict what the costs may be; it all depends on the course the case may take and the number of witnesses to be called; but there would be a considerable falling of expense, and with regard to the subsequent proceedings I do not think they would be less expensive, or not very much less expensive in the county court than in the High Court, apart from the question of getting witnesses to London, as to which I will say something in a moment. With regard to getting witnesses to London it seems to have been assumed that divorce was like other cases, local, in that the petitioner, the respondent, and co-respondent and witnesses are all living in one district. But in my experience that is very unusual. The parties who have committed misconduct generally go away for the purpose; generally to London or the big towns, and it might turn out that the expense of getting the witnesses to the county court would be greater than the expense of getting the witnesses from a country district to London.

3978. (*Chairman.*) You are speaking of a class of case now which does come to London?—That is true.

3979. Where they can afford it?—Yes.

3980. And their habits of moving about are more than the working class?—Yes; but I have known cases of people in humble life; a case where a man has deserted his wife—gone right away as a rule; a case of a woman who has disgraced herself and is turned out of doors and has left home; and possibly other charges have had to be substantiated against her. I do not think it would follow that the witnesses would all be local.

3981. But putting it broadly. Suppose you had a court sitting in Liverpool; is it not always a matter of course that it would be cheaper and more convenient for those people to have them taken there than to bring it to London?—It might be in some cases; but I should not think it would be in a majority of cases. I should think the expense would be very little more. Then, as against that, I think it is very important that the proceedings in the Divorce Court should be on uniform principles throughout the country. I think that is very important indeed.

3982. What is your view about that?—There are a great many special matters in divorce court practice. To begin with, it very often happens that the marriage has to be tested—whether it is a good marriage or not. It is a common thing, if a marriage is in Scotland, to call an expensive expert witness to say it is a good marriage, without which there is nothing to found the jurisdiction of the court upon. Then questions of domicile are raised. Of course, in the poor class of cases, questions of alimony and settlements do not arise.

3983. Would domicile arise much amongst these poor people?—I should think very likely; they may be Irish or Scotch. The poor people in my experience are very migratory at the present time; they go from place to place looking for work. Then I think there is another reason. If the expenses in the county court were made very small so that if a practitioner took up the work his fees would be almost unremunerative, I think it would be a class of practice that would get into the hands of an undesirable class of practitioner, and I think even these questions of identity require the most careful sifting where amongst these poor people what they do is not known and checked as completely as it is in people of a different class of society, and it would be very easy to get evidence, which I think the county court judge, unless he had great experience in this class of case, would not be able to deal with satisfactorily.

3984. Now, with regard to separation orders. Have you had any experience with regard to the application to magistrates?—No, my Lord, none at all.

3985. You have known cases where they have been made?—I have known of cases where they have been made, but I cannot say my experience is sufficient to warrant my giving an account of it.

3986. What does this mean, that you say you are doubtful of their expediency?—That is rather arguing from the effect of them when made in other classes of life—these judicial separations, and I am rather assuming that among the working class the same result would follow.

3987. That is your next point?—Yes.

3988. Well, will you tell us what your view is about the policy of judicial separations?—I do not approve of them, because I think they work a very great hardship on the woman.

3989. Has that been found by you in your experience?—Yes.

3990. How does it operate?—The woman is in a position where she feels she has no status, and she is a wife and not a wife, and altogether she is in a state of great misery, and in most cases is almost driven to despair of her position. In fact, I have known of many cases like that.

3991. What would be your remedy?—I should advocate the wife being entitled to get a divorce under all circumstances for which she can now get a judicial separation if she wishes to do so.

3992. You point out cases of desertion where the husband has gone to the colonies?—I have known several cases of the kind.

3993. She remains tied to him?—She is tied to him and he contributes nothing to her support. She has to explain wherever she goes her circumstances, and she is in a really most painful position.

3994. And if she can get a chance and opportunity of proving adultery, that is great expense?—The expense is almost prohibitive. The question of identity comes in—identifying the man, and it might be necessary to send somebody out to identify him; the expense is almost prohibitive.

3995. You would give it on the ground of desertion?—I would; desertion perhaps for five years, unless it could be explained in certain circumstances—the husband might be a sailor who might be in a hospital in the colonies, or something of the kind; but where there is no reason to think any circumstances of that sort exist, I think it ought to be given for simple desertion.

3996. That is a matter of opinion practically?—Yes, entirely.

3997. But what I want from you is whether you find there are cases where there is that kind of desertion, and it is difficult to prove adultery as well?—Yes.

3998. And yet the wife left entirely behind?—Yes.

3999. Then, thirdly, with regard to the question of publication. Does your experience lead you to express any view on that?—I think, my Lord, as long as the report comes within the bounds of decency, it should be allowed. Reports should be allowed unless the judge who presides at the trial should for any reason see reason to forbid it, or to forbid the reporting of any particular witness's evidence.

4000. Do you know anything that leads you to suppose that reports deter witnesses from coming forward?—I think it does; but in spite of that I think it is all-important that these trials should not be in secret.

4001. The suggestion rather has been that they should not be published in the papers, and yet not heard in secret?—Well, that comes to the same thing almost. I think the fact that divorce actions are fully reported is a deterrent. I think many a woman would hesitate if she is told (assuming she is commencing an intrigue), "Now that will land you in the Divorce Court "with all the unpleasantness attaching to it," and will consider and alter.

4002. Do you know of cases where witnesses have not come forward for fear of publicity?—Yes, I have, but they have been generally witnesses of rather a doubtful class. I do not want to stigmatise all hall porters as a doubtful class, but hall porters of some mansions, who have been accustomed to take money to keep quiet and say nothing. Men of that class value the reputation they have for not telling what they know, and a man of that class will sometimes decline to come forward and give evidence.

4003. Then on the whole you would leave it to the judge?—I would leave it to the judge. I think it is a very difficult subject and I do not think I should be prepared to go further than that at present.

4004. Then on the question of the amendment of the law. You have already dealt partly with that?—Partly with that, my Lord.

4005. First with regard to equality. Have you any grounds (I do not want mere opinion, you know) for putting the two sexes on the same level?—Only, my Lord, that it seems to me they enter into the same contract the one with the other, and that the consequences of the breach of the marriage contract ought to be the same.

4006. That is all you have to say about that?—Yes.

4007. As to judicial separation, you have already said that wherever that occurs it should entitle to a divorce?—Yes.

4008. Now, insanity. Have you had any cases before you where the present state of the law has led to bad results?—No, my Lord. Of course I have my own view, but it is not based upon experience.

4009. Perhaps you will tell us what your view is?—Well, I think in the case of incurable insanity the other party ought to be able to get a divorce.

4010. What do you say about drunkenness?—And the same with drunkenness when it has been continued so long that, in the opinion of a medical man, it would be considered to be incurable or practically incurable.

4011. You have already said what you want to say about desertion. Are there any points with regard to the proof of cruelty you want to draw attention to?—No, except that I have made use of this in my statement; the fact that such very slender acts of cruelty have been accepted as a ground to entitle to a divorce with adultery seem to me rather to show the courts are striving to give divorce for adultery only and almost any kind of cruelty is sufficient.

4012. As if adultery were considered as a sufficient reason?—Yes, that is what I gather as the drift of opinion in the courts.

4013. The rest of your evidence deals principally with details of what improvements could be effected in procedure?—Yes, in order to simplify and cheapen procedure.

4014. Will that all be shown on the table you have prepared of your comparative bills of costs?—I am afraid not, my Lord, because my table only refers to an undefended case.

4015. Would you just indicate, generally, on what lines procedure could be simplified even if retained in the High Court?—Well, I think affidavits verifying petitions and verifying particulars are unnecessary. I think it ought to be sufficient if the petition is signed. I have never heard of a case——

4016. We have just had an expression of opinion, I think, from one of the witnesses that the petition should be verified not only by the client but by the solicitor?—Yes, I do not agree with that.

4017. Why not?—Because I have never heard of a case where a charge of perjury has been made on an affidavit verifying petition. It is looked upon as form.

4018. Does not the suggestion that the solicitor should swear to a proper case tend to check the institution of improper proceedings?—Well, I doubt it very much. I think there would be very great reluctance on the part of a solicitor to commit himself to an affidavit in that way.

4019. It has been said, in my time, that it would be very desirable if there were a preliminary inquiry before the petition is filed?—Yes.

4020. Because people may be harassed improperly?—Yes.

4021. You do not agree with that?—Well, it is such a far-reaching reform; I have not considered that point.

4022. You do not think it is necessary for the petition to be supported by affidavit?—No, my Lord. I think it should be dispensed with.

4023. Anything else?—Then I think the citation is not necessary.

4024. One document would do?—One document would do. Then as to evidence of cruelty—cruelty that has been proved before a magistrate—I think the magistrate's copy, or some official notification of the order, ought to be sufficient without requiring the facts to be proved over again. Then as to searches, one has to file certificates, for instance, and certificate of no appearance. The court ought to issue that itself, and not ask the solicitor to prove that there has been no appearance. The certificate by the court ought to be sufficient. The others are really quite minor matters, and I do not think I should take up the time of the Commission with that.

4025. No, that is really for the rule committee?—Yes.

4026. May I take it you have given us the most substantial points you have thought of?—Yes, I have, my Lord.

4027. (*Mr. Brierley.*) Are you going to put that bill of costs in?—Yes.

4028. Do you agree with the first witness we had to-day, that a petitioner, say, from Norwich, an undefended case, would cost him 55*l.* to 60*l.*?—According to my suggested amended procedure it would cost 33*l.* According to the existing procedure it would be 41*l.*

4029. (*The Earl of Derby.*) In answer to my question, it was not only out of pocket expenses, but bringing the witnesses up?—Everything, my Lord.

4030. (*Mr Brierley.*) What the petitioner has to find in hard cash?—Yes.

4031. To pay his own country solicitors and his witnesses, and fees and costs?—41*l.* 3*s.* 4*d.*

4032. That includes everything?—That includes everything right down to decree absolute.

4033. Well, that is rather cheaper than the first witness said he thought it would be in a case coming from the North. What do you make it?—With my

suggested reformed procedure, 33*l.* 18*s.* 6*d.* I have not attempted to reduce or to suggest any reduction of the court fees, but I really think they ought to be reduced to possibly another ——

4034. Does that include the country solicitors' profit?—Yes, everything.

4035. (*Chairman.*) Perhaps Mr. Brierley would let me ask one question. May we take it the memorandum of proof you have sent, commencing with the words, "As regards procedure and practice, I see no reason "to remodel the existing procedure and practice, but "would suggest some slight amendments," may I take it that passage to the end contains your view as to suggested amendments?—Yes.

(*Chairman.*) Then we will have that put in as part of your evidence (*the following is the portion of the Witness's proof to which the Chairman referred*):—

(a) *Petition and Affidavit verifying.* — Affidavits verifying petition and verifying particulars are unnecessary. The statement that there is no collusion or connivance could be inserted in the petition, and as long as the petition or answer containing countercharges bears the signature of the party it should be sufficient. There have been many decrees rescinded on the ground of collusion, but I have never heard of a prosecution for perjury contained in the affidavit verifying the petition. The affidavit verifying particulars merely states that the party can give no further or better particulars than those mentioned, yet notwithstanding this affidavit, applications for further and better particulars are often made, and further and better particulars are given.

(b) *Citations.*—At the present time separate citations have to be issued against the respondent, and each co-respondent. There is no reason why one citation containing the names of all the parties to be cited should not be issued. It frequently happens that the respondent and the co-respondent are living together, and there is no difficulty therefore in producing the original citation. In cases of absolute necessity, concurrent citations could be issued exactly in the same way as concurrent writs are issued at the present time in the King's Bench Division.

(c) *Evidence.*—In cases of petitions for divorce on the ground of cruelty and adultery, where the cruelty has formed the subject of proceedings before the magistrates, a certificate of conviction before a magistrate for cruelty, showing on the face of it that such conviction was for cruelty, should be accepted in all cases as evidence thereof without further proof than the identity of the person mentioned in such certificate.

(d) *Searches.*—In cases of searches for appearance either on setting down the cause in default of appearance or on making the decree absolute, the searches should be made by the officials on an ordinary request for a search, and a certificate of no appearance should be issued by them which should be filed either on lodging the request for the registrar's certificate or on filing the notice to make the decree absolute. At the present time, these searches have to be made by the solicitor and affidavits of search and of non-appearance have to be made. The affidavits are quite an unnecessary expense.

(e) *Affidavits of Search for Answer.*—In setting down causes in default of answer the same thing applies. According to the present practice, the solicitor has to make a search and file an affidavit that no answer has been filed. This should be proved by certificate in the same way as in default of appearance.

(f) *Summonses.*—With regard to non-attendance on the hearing of summonses, according to the present practice, where the summons is heard and the respondent to such summons does not attend, an affidavit, not only of service but also of attendance on the summons, and that the respondent did not attend, has to be made; and inasmuch as in the majority of cases the person who attends the hearing of the summons is not the person who served it, it is necessary for two affidavits to be made, one of which is quite unnecessary.

(g) *Motions.*—The present practice of making many applications on motion requires revision, and the registrars should have power to make certain orders which can only now be made by the court on motion. In two instances this could be very well done, namely, applications for substituted service of petitions, &c., and orders dispensing with unknown co-respondents. The practice in the King's Bench Division could very easily be followed, *i.e.*, affidavits setting forth the facts should be lodged at the registry and the registrars should endorse their orders on the affidavits. Both the orders and the affidavit would always be available for the court. The same thing applies to dispensing with co-respondents. The peculiarity of the practice in this respect is that, during the long vacation, the registrars have the same powers as the judge ordinarily, and the anomaly is therefore that it is right for the registrars to do during the vacation things which the judge only can do during the sittings.

(h) *Petitions for Maintenance, &c.*—Petitions for maintenance and variation of settlement are, according to the present practice, notwithstanding an appearance has been entered in the suit, by the rules bound to be personally served. It is submitted that all such petitions should be served on the solicitor in the suit.

(i) *Extensions of Time.*—The solicitors acting for the parties should be able to extend time by consent. Although this is done in practice, yet by the rules it is not allowed.

(j) *Court Orders.*—The practice as to drawing up orders made by the court is very unsatisfactory. When orders are made by the court on motion, they are drawn up by the registrar, and are filed, and nobody sees them unless the solicitors go down to the registry to inspect them, for which attendance they get no fee, and consequently it is not usual to do so. Notwithstanding a fee for the order is paid, the court does not give the parties any document representing the order unless it is bespoken and paid for as a copy. When this is done, it is not uncommon to find mistakes in the order which have to be amended. Either the solicitors having the conduct of the proceedings in which the order is made should draw and lodge the order, or a draft thereof should be given out before the order is actually signed, or a signed duplicate of the order should be handed to the solicitor, as of course without further payment.

(k) *Retainers.*—Retainers to counsel should not be allowed as between party and party. They are quite unnecessary. Counsel is, for instance, instructed to settle a petition, and he is allowed a fee for settling the petition, and a retainer. The fact that he settles the petition should be enough to retain him under the ordinary rules of the Bar. It is true, counsel will, often, in the case of poor litigants, forego this fee, but the fact that it is a recognised fee only adds to the expense of a suit.

(l) *Filing Fees.*—The fees charged for filing documents need revision, and there should be no fees payable for filing official documents issued or authenticated by the court, *e.g.*, citations; certificates that cause is in order; questions for the jury.

4036. (*Mr. Brierley.*) Those are the sort of amendments that would reduce a bill of that kind?—No, they are additional.

4037. It would reduce it from 41*l.* to 33*l.*?—Yes. That is through dispensing with the citation, and so on. I have marked on the bill as to the present procedure the items which would disappear.

4038. (*Chairman.*) What is the total of the disappearance?—It is about 8*l.*

4039. (*Mr. Brierley.*) Have you formed any estimate of what a similar case to that would cost if tried in the county court, their fees remaining on about the same footing?—It would depend on what procedure was adopted in the county court. If the same or similar procedure were adopted I do not think the expense would be less; but if some special procedure were invented in the county court, it is impossible to say what it might be; but down to trial I do not think the expense would be much less.

4040. Some of the witnesses seem to think it might be reduced to two thirds. You do not assent to that?—I do not see how it could, because down to trial I have reduced it to a minimum in my note, and I think in the county court it would not be less, or very little. Some document must be issued from the

county court, and some document must be served, and the identity of the person on whom it is served must be established, and practically in the High Court at that stage it only comes to about 9*l.* I do not think it would be much less in the county court unless the county court fees were less, as I think the High Court fees might very well be.

4041. What you say is that you suggest, at any rate, a saving of 8*l.* might very well be brought about on a 41*l.* bill?—Yes.

4042. I suppose you agree, if the county court jurisdiction were confined to persons of limited means—150*l.* has been suggested as the income by both parties, as a general rule those difficult questions—proofs of marriage, and so on—would not be very likely to arise, would they?—Yes, I think they would.

4043. But that would be only rather a small number, would it not?—I do not know. The very fact that it did not come very often would be a reason why it should be dealt with by an experienced judge.

4044. The question of marriage does arise in all the separation orders before magistrates?—I have not had any experience.

4045. You would not suggest that the question of marriage arises in many of them, would you?—I find in the High Court cases the question does frequently come.

4046. It is rather suggested to you that the marriage, as a rule, is admitted?—But the court has to be satisfied; it is not a question of the parties admitting it.

4047. No; that would be so in the divorce court?—Yes; that is one of the reasons why I hesitate to give power; because it is a matter of public policy, not merely between the parties.

4048. I think you are right in saying it would arise with regard to foreign people?—And Irish people.

(*The Earl of Derby.*) Does it arise in separation orders?

(*Mr. Brierley.*) Not much. It is never really gone into; because, as a rule, there they take an admission.

4049. (*Sir Lewis Dibdin.*) Do you know enough of the separation order cases to be able to say the question of marriage between the parties is never, as a matter of fact, gone into at all? Is it? There would be a tacit admission, but there is no actual admission at all, is there?—Separation orders before the magistrates?

4050. Yes?—I do not know at all.

(*Sir Lewis Dibdin.*) My experience is it is never gone into at all.

(*Mr. Brierley.*) They generally prove it by saying they are married.

(*Sir Lewis Dibdin.*) And you may call that an admission, but the husband and wife do not know they are making any admission.

(*Chairman.*) That is all that is done in the High Court, except that the certificate of the marriage is lodged with the petition.

4051. (*Sir Lewis Dibdin.*) I think you said in your very extensive practice you never came across a case of incurable insanity that called for a divorce?—No, I have not.

4052. Have you come across cases of drunkenness that call for it, in actual practice?—No; because generally the drunkenness is accompanied by misconduct.

4053. Now I take it your view as to the county court, speaking generally, is that if the practice of the High Court, and the expense, were put on a better footing and remodelled, there would not be any really very substantial economy in going to the county court?—I do not think there need be. No, I think that would be so in the majority of cases.

4054. And I gather from your evidence you are in favour of keeping divorce as a very important and grave matter for what I will call a first-rate tribunal?—Yes, decidedly.

4055. It ought to have the best court that can be devised for the purpose. Do you think it is possible to make divorce too easy?—Yes, I do.

4056. It is possible, is it not, to make it too speedy and easy a matter to get divorce?—I think it is.

4057. Now you have told us very frankly that you think the grounds of divorce ought to be enlarged. That, I suppose, is a result of your knowledge of particular cases?—Yes.

4058. Have you also considered it from the point of view of the good of the State as a whole?—No, I cannot say I have. I have simply considered the hardship in individual cases.

4059. May I take it that your view is limited to that—a business and professional view, and that you do not concern yourself with the larger political aspect of divorce, taking "politics" in its large sense?—No, not at all.

4060. And may I say the same with regard to the religious aspect of the question?—Yes, I have not taken that into consideration.

4061. (*The Earl of Derby.*) I only want to ask a question or two with regard to the expense. Mr. Griffithes said that if he was asked by the country solicitor to quote the lowest terms it would be 35*l.* That included the 10*l.* which was equally divided between the London agent and the local solicitor?—Yes.

4062. You would say a much lower sum?—I think it would be lower than that, yes.

4063. But still granted the 10*l.* for divisible profit?—Well, the 10*l.* is represented by work which is not duplicated work. It is work which, if divorce were conducted in the country, would have to be done by the country solicitor; but if done in town it has to be done by the London solicitor. It is not duplicated work.

4064. But the actual out-of-pocket expenses you have given us, leaving out of account the 10*l.* for the work done?—Yes.

4065. You agree with him——?—No, I think his estimate was rather high. It can be done rather cheaper than that.

4066. Two other questions. You said that for the purpose of committing an offence, parties went away from home. Does not that apply much more to the better-off classes than the working classes?—I think it does, my Lord.

4067. If we are principally trying to solve the difficulty for the working classes, that does not come in so much, does it?—It does not come in so much, but it is an element for consideration.

4068. In those cases the incriminated persons and the evidence would live within close proximity to the county court?—I should rather doubt that.

4069. One other question. You mentioned the question of desertion for two years, and you said there might be cases of a sailor who was ill?—Yes.

4070. If you take an ordinary case of a sailor leaving Liverpool and going to San Francisco and back again, and taken ill and being in a hospital, he might very well be for three or four months in San Francisco?—Yes.

4071. As you know, these people do not, as a rule, write very often?—No.

4072. What chance would he have of defending himself against a charge of desertion?—The court would have to look closely into the circumstances, and if it could be suggested at all that he had not voluntarily ceased communicating with his wife, then the matter ought to be postponed for further inquiry.

4073. (*Chairman.*) Perhaps I might assist you in this way. The original departure would be no desertion at all?—No.

4074. Because he would be going away with the consent of his wife to earn money as a sailor?—Yes.

4075. That would not found desertion?—No.

4076. It would be necessary to count desertion from some time when something happened to show he intended to desert his wife?—Yes.

4077. (*The Earl of Derby.*) Would not that equally arise with a man who says he is off to Canada to try and make a home for her there?—If he says he is off to Canada to make a home for his wife, that would

give reason for doubting whether he intended to desert her.

4078. In your case the desertion must mean when the original departure from the wife was without the wife's consent or knowledge?—That is right. Well, without her consent; I do not say knowledge.

4079. (*Chairman.*) Or might I suggest, if the noble Lord does not mind my suggesting it, that where originally consented to, but after a proper application to come back, or some other circumstances showing he is not desirous of coming back at all, being proved to the satisfaction of the court ——?—Yes.

4080. (*The Earl of Derby.*) I wanted to see what safeguards you would give for a man not really guilty of desertion, and yet who might be away two years?—In my proof I said five years.

4081. Two years is the time you mentioned; five years is your proof?—Yes, and I think I should prefer five years.

4082. (*Chairman.*) Just one summarising question. Even with your amended scheme, do not you think if parties could go to the court within a few miles from them they could get their case heard cheaper and more conveniently than coming to London?—To some extent it may be so.

4083. But as to the exact extent it is difficult to calculate?—Yes; but I think there are other objections that would outweigh it.

4084. Yes, but this is only as to costs?—Yes.

The following are the specimen bills of cost referred to and put in by Mr. Curtis in his evidence:—

Costs of Husband's Suit Undefended.

Present Procedure.

	£	s.	d.	£	s.	d.
Instructions for petition		—		0	6	8
*Attending retaining counsel		—		0	6	8
*Paid his fee	1	3	6		—	
Drawing and engrossing petition.		—		1	0	0
Attending counsel to settle.		—		0	3	4
Paid his fee and clerk	1	3	6		—	
*Instructions for affidavit in support.		—		0	6	8
*Drawing and copy		—		0	6	8
Attending petitioner on his signing.		—		0	6	8
*Paid oath on affidavit	0	1	6		—	
*Attending filing affidavit and petition.		—		0	6	8
*Paid	0	5	0		—	
Attending for petition under seal.		—		0	6	8
7/6 *Paid	1	3	0		—	
*Instructions for citation against respondent.		—		0	6	8
*Drawing		—		0	7	6
*Attending sealing		—		0	6	8
*Paid	0	5	0		—	
Copy to service		—		0	1	8
Service		—		0	5	0
*Instructions for citation against co-respondent.		—		0	6	8
		—		0	6	8
*Drawing		—		0	7	6
*Attending sealing		—		0	6	8
Copy to serve		—		0	1	8
Service		—		0	5	0
Endorsing two certificates of service.		—		0	5	0
Attending searching for appearance.		—		0	6	8
Paid searches	0	2	0		—	
*Drawing affidavit of search and engrossing.		—		0	6	8
*Attending swearing		—		0	6	8
*Paid oath	0	1	6		—	
*Paid filing	0	2	6		—	
Drawing affidavit of service and engrossing.		—		0	6	8
*Marking two exhibits		—		0	2	0
1/6 *Paid oath and exhibits	0	3	6		—	
Paid filing	0	2	6		—	
*Paid filing citation	0	2	6		—	
*Attending for registrar's certificate.		—		0	6	8
Attending entering cause		—		0	6	8
Paid and for decree	3	0	0		—	
*Paid filing certificate	0	2	6		—	
Attending searching cause list.		—		0	13	4
Instructions for brief		—		3	3	0
Drawing same, 40 folios		—		2	2	0
Copy for counsel		—		0	13	4
Copy petition to accompany.		—		0	3	4
		—		0	3	4
Copy citations		—		0	3	4
Paid fee to counsel and clerk.	3	5	6		—	
Attending him		—		0	6	8
Paid him conference fee and clerk.	1	6	0		—	
Attending him		—		0	3	4
Attending conference		—		0	13	4
Notice to petitioner and two witnesses to attend.		—		0	6	6
Attending hearing		—		1	1	0
Drawing costs and copy, 10 folios.		—		0	10	0
Attending filing		—		0	6	8
Paid	0	2	6		—	
Notice of taxing copy and service.		—		0	4	0
Attending taxing		—		0	13	4
*Attending for order to pay.		—		0	6	8
*Paid	0	5	0		—	
*Copy and service		—		0	3	6
Term fee (agency)		—		1	1	0
Letters, &c.		—		0	10	6
Witnesses.						
Petitioner, Norwich—						
Fares to and from London	0	19	0		—	
A.B., bootmaker (Norwich)—						
Fares to and from London	0	19	0		—	
Loss of time and refreshments.	0	10	0		—	
Mrs. C. (Northampton)—						
Fares to and from London	0	10	8			
Loss of time and refreshments.	0	7	6		—	
	£3	6	2			
Decree Absolute.						
*Drawing affidavit and notice		—		0	7	2
*Attending swearing		—		0	6	8
*Paid oath	0	1	6		—	
Attending searching minutes and appearance book		—		0	6	8
Paid searches	0	3	6		—	
*Paid filing affidavit	0	2	6		—	
Paid filing notice	0	2	6		—	
Attending court		—		0	13	4
Taxing fee	1	1	0		—	
	17	14	8	23	8	8
				17	14	8
				41	3	4

Items marked with * would be omitted or reduced under suggested reformed procedure.

Costs of Husband's Suit Undefended.

(Suggested Reformed Procedure, but existing Court Fees and Solicitor's Costs.)

	£ s. d.	£ s. d.
Instructions for petition	—	0 6 8
Drawing and engrossing petition and copy to file.	—	1 0 0
Attending counsel to settle	—	0 3 4
Paid his fee and clerk	1 3 6	—
Attending petitioner on his signing petition.	—	0 6 8
Endorsing petition and copies with notice to appear.	—	0 5 0
Attending filing petition	—	0 6 8
Paid and for sealing	0 7 6	—
Two copies petition to serve, 8 folios each.	—	0 5 4
Service on respondent	—	0 5 0
The like, co-respondent	—	0 5 0
Endorsing certificates of service.	—	0 5 0
Attending searching for appearance.	—	0 6 8
Paid	0 1 0	—
Drawing and engrossing affidavit of service.	—	0 6 8
Paid oath	0 1 6	—
Paid filing	0 2 6	—
Attending entering cause for trial.	—	0 6 8
Paid and for decree	3 0 0	—
Attending searching cause list.	—	0 13 4
	£4 16 0	5 2 0
Instructions for brief	—	3 3 0
Drawing same	—	2 0 0
Copy for counsel	—	0 13 4
Copy petition to accompany	—	0 2 8
Paid fee and clerk	3 5 6	—
Attending him	—	0 6 8
Paid him conference fee and clerk.	1 6 0	—
Attending him	—	0 3 4
Attending conference	—	0 13 4
Notice to petitioner and two witnesses.	—	0 6 6
Attending hearing	—	1 1 0
Drawing costs and copies, 8 folios.	—	0 8 0
Attending filing	—	0 6 8
Paid	0 2 6	—
Notice to tax copy and service.	—	0 4 0
Attending taxing	—	0 13 4
Term fee (agency)	—	1 1 0
Letters, &c.	—	0 10 6
Witnesses.		
Petitioner, Norwich— Fares to and from London	0 19 0	—
A.B., bootmaker (Norwich)— Fares to and from London	0 19 0	—
Loss of time and refreshments.	0 10 0	—
Mrs. C. (Northampton)— Fares to and from London	0 10 8	—
Loss of time	0 7 6	—
	£3 6 2	
Decree Absolute.		
Attending searching for appearance.	—	0 6 8
Paid searches	0 3 6	—
Drawing application to make decree absolute and copy.	—	0 5 0
Paid filing	0 2 6	—
Attending court	—	0 13 4
Taxing fees	0 16 0	—
	13 18 2	20 0 4
		13 18 2
		33 18 6

Adjourned until Monday at 10.30 a.m.

Winchester House, St. James's Square, London, S.W.

SEVENTH DAY.

Monday, 7th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT,
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. WILLIAM TYNDALL BARNARD, K.C., called and examined.

4085. (*Chairman.*) You are one of His Majesty's Counsel?—Yes.

4086. And I think you have been leader of the Probate and Divorce Bar for many years?—I have had a certain amount of practice there, but not leader, my Lord.

4087. And also your junior experience was largely in that branch?—Yes.

4088. You have been good enough to prepare a short memorandum of points with which you wish to deal. The first question you have dealt with is the question of conferring jurisdiction on local courts with limita-

tions and procedure. What is your view that you wish to express about that?—My view is that from the year 1857 the Legislature has thought right to leave divorce cases to be tried by a special court, and my view is that it would be injurious to the public that any judge except a judge of the High Court should be a judge to dissolve a marriage. In the first place, I do not know that there are a great number of poor cases which are not now brought. In London you have the Divorce Court at the doors of the people, and my experience during the time I was a junior was that the majority of poor cases came from the country, and I think it might be tested by the *forma pauperis* cases. I think there are very few *forma pauperis* cases that are brought in London where the people have the court right at their doors. The next point I should like to specify is this. I think it is for the benefit of the public that a small number of judges should be the persons who should dissolve marriage. When there are only a few persons you know perfectly well on what lines the judges go, and by that means I think it prevents a great number of cases being brought where the persons would fail. I think if you transfer to the county courts, where I believe there are over 50 judges, that people would commence actions without any certainty of obtaining a divorce, and a great number of county court judges would take very different views to what the present judges have taken, and in some courts you would be able to get divorces for almost nothing, and in other courts the judge would be as strict, or perhaps stricter, than the judges who are now presiding in the Divorce Court. I also think that if suits are started in the county court there will be a great deal more collusion than there is at the present time. I think there is a certain amount of collusion at the present time, but I think it would be increased tremendously. I also think that if cases went to the county court you could not deprive the parties who are charged with a *quasi* criminal charge from being tried by a jury, and I think it would be a great misfortune for persons to be tried by county court juries. First of all, I should like to say this: that I think it would be a disadvantage to the persons that they should be tried by a jury in the very district where they are. I think where divorce cases are started it is talked about in the place where the parties live. People who will be summoned as jurors will hear of the discussions, and some of them, or a great number of them, will make up their minds before they come into court as to what should be done in a particular case. Therefore, I think it would be a disadvantage to try by jury in the county court. Then, again, I think if these cases are tried in county courts there will also be the disadvantage to the advocates who appear in such cases. At the present time I do not say the advocates who appear in the Divorce Courts are better than other advocates, but they have the whole matter at their fingers' ends. They know the whole points. They know the points of collusion, and every technical point is known to them. Then, if it goes before the county court judges—I am not suggesting that the county court judges are not as fit to try divorce cases as other lawyers, but I say they have not had the training; and every new judge who has been brought to the Divorce Court, most of them, with one exception, have been new to the work; I believe all the judges have relied on the men who practise before them in the first instance to help them to—I may almost say—learn the work. We make it a duty when we have a new judge to point out the difficulties of the case, and to point out clearly what are the things in favour and against granting a decree. I say the county court judges who at the present time, or the majority of them, have not been brought up in the divorce practice at all cannot have advocates before them who will be able to help them to carry out the law of the Divorce Court. Of course, if it is desired to make divorce easy, so that every person almost can obtain a divorce, and it does not matter whether there is collusion or not, and that a divorce may be granted on grounds which are not now recognised by law, then of course there will be no objection to transferring it to any court, and I do not know that it would be necessary to have a court at all; you might register the divorce in some place in the country and let the people have their divorce.

4089. I think that deals with your points chiefly?—Yes, my Lord. There was one other thing I should like to say. I think the fees ——

4090. Might we come to that when we deal with the details?—Yes, my Lord.

4091. I should like to know a little more in detail your view on some points connected with this view which you have already expressed. For instance, collusion. Do you mean to say that that means any more than if you increase the number of cases, and suppose collusion prevailed in the increased number as it might do in the present number, that the increase in collusion would be any more than relative to the increase in the number of cases?—I think it would.

4092. In what way?—All the members of the Bar who practise in that court, I think, know very well that before a case is started they frequently discuss it with the parties, and you can see at once in certain cases the desire to go and make an arrangement with the other side. Of course, it is always pointed out to them you cannot do that. That will be collusion. I do not think a great many people understand what collusion is, and unless they had proper advice people would discuss the matter and arrange it beforehand a great deal more than is done at present.

4093. What is your view, then, as to why there should be any collusion at all? Why does it exist?—I think because parties become dissatisfied with the marriage, or are unhappy, and they try to arrange between themselves that it would be better that one or the other should have a divorce.

4094. That means that the law does not meet the difficulties that people encounter?—I would not go to that extent. In a certain way, yes.

4095. Would not that be mitigated very largely if the causes of divorce were arranged so as to meet the principal difficulties which at present people cannot get over. Let me illustrate one. For instance, the want of recrimination in Scotland. Are you including in collusion those acts where the petitioner keeps back from the court, without the actual consent of the other side, a cause which might prevent them getting a divorce?—No, I am not considering that as collusion.

4096. Well, going back to the point I put ——?—My own view is, however you extend the law, unless you give to the two parties of the marriage the right to a divorce if they do not agree with one another, I do not think you can stop collusion. Of course, it might be lessened.

4097. You are aware that that is given in certain other countries?—Yes.

4098. Have you made any study of the laws of other countries?—No, I have not.

4099. Or the operation of that particular feature?—No.

4100. Then another point—on the question of lack of uniformity. It occurs to me to ask you this. You are in favour of a jury remaining?—Yes.

4101. A jury deals with facts, does it not?—Yes, my Lord.

4102. Then with a jury you get possibly diverse opinion in every case where a jury is brought in?—That is so.

4103. I mean the point made is lack of uniformity, because more judges would try the cases than the two. Well, if you advocate the retention of the jury you increase the possibility of want of uniformity vastly?—But still, when you have a jury, and you have a judge who has been brought up in the one particular line, he always has a certain control over the jury. I do not say it is an absolute control, but ——

4104. What is the good of having a jury at all?—My Lord, I think there are certain cases in which there is a very great conflict of evidence, and I think under those circumstances, if there is a conflict as to the evidence, it is better to have a verdict of 12 than one upon it.

4105. I was going to ask you what I consider a very pertinent question, and you will answer it as you think fit. Is it generally the view that a jury is desirable when you have a bad case, and a judge where you have

a good one?—Well, of course, in certain cases that is so. I mean if you have a perfectly clear case you do not expect there to be much conflict of evidence; but in a great number of cases where it is inference, and in which there is a great deal of evidence on the part of the petitioner as to the conduct of the respondent and co-respondent, and there is a great conflict with regard to certain parts of it, I think the opinion of 12 men of the world as to that is more reliable than the opinion of one who is the judge.

4106. That is to say, where a case is reasonably clear you would have a judge, and where it is doubtful you would have a jury?—I think, my Lord, it is only right for the judge himself where there is a great conflict of evidence. The judge may take a wrong view, and it is less likely that 13 would take a wrong view.

4107. But that does not quite meet the difficulty I have felt about this question of uniformity, whether when you get a jury you get the people haphazard?—But I take it, my Lord, the cases that would go to the local courts would be cases without juries. For instance, there would be a good many undefended cases.

4108. It is two-thirds to five-sixths at present?—If I might take the undefended cases with regard to uniformity, a great difference of opinion arises as to what is cruelty.

4109. I will come to that in a moment. I think I have sufficiently indicated one of the difficulties that are felt, but your point about the undefended cases does remind me. They are all cases of a simple character, as a rule, are they not?—They are.

4110. Well, do you really see any serious difficulty in a county court judge dealing with those?—I do. I think myself that one county court judge will grant a decree when the misconduct is proved and there is practically no evidence of cruelty; another county court judge, where there is slight evidence of cruelty which in all probability would be held sufficient by the judges who have been trained in that work, would hold that there was not cruelty; and so you would go on throughout the whole of the 54 or 55, and the result would be that as soon as you found one county court judge is a judge who will grant a divorce upon almost nothing, people will change their work if they desire to get a divorce and they will move into that particular district, and the result will be that we shall have divorces in this country more like some of the states in America—take, for instance, the state of Dakota.

4111. Might I venture to put one or two points with regard to that diversity of opinion which has been more or less suggested, but still I want your view about them? The grounds of divorce must be always on a question of fact?—Yes.

4112. We will say at present adultery is a ground against a wife?—Yes.

4113. That is a pure question of fact?—Yes.

4114. There ought to be no diversity of opinion about that?—No.

4115. I want just to ask you is it your experience that the county court judges do deal with that question in all suits to enforce payment of deeds of separation under the *dum casta* clauses?—I suppose they would in a very small ——

4116. If the wife sues for maintenance, and there is a *dum casta* clause, the husband, if he had ground for it, would set it up?—Yes.

4117. That would be tried before the county court judge at present?—Yes.

4118. I ask that because those cases have come before me. Then, with regard to the other point. The magistrates at present can, in the summons before them, meet the summons by finding the wife guilty of adultery?—That is so.

4119. All over the country?—Yes.

4120. So that that particular issue is one of fact, and at present is dealt with in the two cases I have mentioned by local authorities?—Yes.

4121. Then take the question of desertion. Is that anything but a question of fact?—No, but it sometimes becomes a very complicated question of fact.

4122. Still, it does not strike me at the moment as involving the possibility of much difference of opinion—pure fact?—No, I do not think it would.

4123. Now, take the case of lunacy; that, if added as a cause, would be a pure question of fact?—Yes.

4124. So would crime?—Yes.

4125. Then there is the question of cruelty. That does not arise, as a rule, where a wife is charged?—It may arise as a counter-charge.

4126. But does it not chiefly arise as a supplemental cause for the wife in getting a divorce?—Yes, in the large majority of cases.

4127. Supposing that was eliminated as one of the necessary grounds of proof. The only point we have heard mentioned yet in which there would be much likelihood —— ?—Of course, that would simplify the matter, but still there would be the question of collusion.

4128. I am speaking of this question of fact?—Certainly, my Lord.

4129. And at present the magistrates have to deal with persistent cruelty in every one of these summonses where cruelty is alleged?—That is so.

4130. That is to say, there is a possibility of diversity of opinion in an enormous number of cases?—Yes.

4131. This question of uniformity has been put before us very much, and I cannot see at present that we have any clear difficulty except on the possible ground of cruelty. That is the principal ground, I think, and if that was eliminated as a material matter it would not arise?—I think it might arise slightly in questions of desertion, but I do not think so much.

4132. Then, going to the question of cruelty; the definition of cruelty is an accepted one?—Yes.

4133. It is the application of it?—Yes.

4134. Do you find in practice when there is a clear case of adultery, and a somewhat shadowy case of cruelty, the jury are apt, notwithstanding the definition put before them, to jump at the question of cruelty?—I think both the juries and judges, where the misconduct is clear, always lean to try and find there is cruelty.

4135. What inference do you draw from that? Is it that they think the ground of adultery should be sufficient?—I do not think quite that, but I think, in particular cases, where the court has come to the conclusion it is impossible for the parties to live together, and the husband has been guilty of misconduct, and there is a certain amount of cruelty which is just on the border line ——

4136. They let it go?—Yes, my Lord.

4137. Now, as against those points; do you think no steps ought to be taken with regard to the poor people?—No; I do. I should like to point out that I do not know that there would be a great saving of expense in cases going to the county court at the present moment. I understand the county court judges, or the majority, are very full up with work, and that cases are adjourned from time to time at the various county courts which increases the expense immediately, and with regard to undefended cases at the present moment in the Divorce Court, though the parties come to London, they are always, or nearly always, heard the day they come up.

4138. There are two difficulties with regard to London; the first is instituting a suit and defending it and attending interlocutory proceedings without the persons coming themselves or being legally represented. At present we are told by one magistrate—and it is common ground—that a petitioner instituting a suit must either come himself, if he wishes to appear, or instruct a solicitor in London. The suggestion made is that if he were alone able to go straight to his county court he could file the petition with the assistance of the registrar, and do it himself. That is one of the practical difficulties which I should like a suggestion upon, if you have any?—For myself I would prefer for the petition to be started in London, but I could see no objection to the petition being filed in the country, either in the county court or the probate registry, or the High Court registry, and to its being then sent to London.

4139. Then, that would involve the right to appear in the country?—Certainly, I would not object if it became necessary to appear; but as far as the interlocutory proceeding go, where there are solicitors or counsel engaged, it is very unusual for the parties to be present. Of course, if they are not instructing legal advisers, they must be present.

4140. At present I do not see how you get over the difficulty, if you have all the proceedings in London, of a person who has no means to instruct a solicitor getting through, though he could do it if he was on the spot or with the court close to him?—If it is an undefended case, I understand your Lordship has before you questions with regard to the costs.

4141. Yes?—The only question is what difference would there be in the costs of a case if tried in London.

4142. The two suggestions are: first of all, the employment of a London agent, and, secondly, the cost of bringing the witnesses and parties; and thirdly—I ought to add—the difficulty of these poor people getting away from their employment for more than a few hours. Those are the three principal points?—If it goes to county courts, and they are adjourned from time to time, I should think the costs with regard to the witnesses would be as large as it would be in bringing them to London once and sending them back again.

4143. Would you think it might meet this difficulty if a limited number of county court judges were selected to deal with the whole work of larger districts than we have at present?—I do not think it would. There would still be the points I pointed out with regard to the various views, and the fact that at the commencement there would be no trained advocates before them to——

4144. That would not apply to places like Manchester, Liverpool, and Birmingham, where there is a large Bar?—Of course, there is a very good Bar at Manchester, but I do not think there are many members of the Bar there who have practised in divorce cases at all.

4145. Then, you do say in your proof that some step should be taken. What do you suggest apart from what I have put to you?—My own view is that a case should be started in London; that after the petition had been filed the question with regard to the means of the party should be considered, and that the judge of the Divorce Court should decide where that case should be tried. If he says that it is necessary in the interests of justice that a particular case should be tried in a local centre, then he should go down and try it there, or that some person should be deputed to try it there for him. It might meet the case in regard to undefended cases that the senior registrar might be sent if the judge could not be spared.

4146. Would not the county court judge do as well as that?—No; I think, my Lord, the senior registrar has had the practice. Most, or some, of the registrars are barristers who have practised in the court, and who would know the work and be able to conduct them.

4147. You think that would cope with the work all over the country?—That would be impossible to say. My own view is that I do not know it would lead to a very large increase in divorce practice. I know other people think it would lead to a very large increase; but that would have to depend on the working of it; it would be seen very shortly whether it would or not.

4148. Then your next points deal with certain details. The power to order evidence corroborating by affidavit?—What I mean with regard to that—if I might take this case. Supposing there is a divorce case coming from North Wales—a wife's petition; she is alleging that her husband has treated her with cruelty; she would have to give the evidence herself. It may be that one part of the evidence would be that the husband had struck her and given her a black eye, and that she had gone to Mrs. A., and seen Mrs. A., and under the present system Mrs. A. has to come from North Wales just to prove that she saw the black eye. I think, if you prove that by the petitioner, and then have an affidavit by Mrs. A. that she saw the black eye, that would save a great deal of expense.

4149. That is done at present sometimes?—But not to any great extent; I think it might be extended.

4150. Then you suggest the reduction of court fees and the abolition of citations; the service of plain instead of sealed copies, the practice of suing *in formâ pauperis* the same as in the King's Bench Division. What is the point there?—The court fees at the present moment in undefended cases amount to about 8*l.* 9*s.*

4151. (*The Earl of Derby.*) Is this *in formâ pauperis*?—No, but in the undefended case. All the court fees go *in formâ pauperis* cases; but I have had a list prepared of the court fees in undefended cases. A husband's suit, undefended, would cost, in court fees, 7*l.* 14*s.* If there is a jury it will cost 8*l.* 9*s.* In a wife's undefended suit the court fees are 7*l.* 10*s.* I have also had a statement prepared with regard to divorce cases. I think the court fees are too high. For instance, I cannot see what is the object of having a citation at all. I should put on the petition a notice for the person to appear, which would do away with a considerable amount. I think the hearing fee of 3*l.* is a great deal too high for an undefended case. Under the present system you have a case that lasts 18 days (which we have had) and a hearing fee of 3*l.* is paid to the court. In an undefended case that takes 10 minutes or sometimes a quarter of an hour, the same fee is paid, and I say something should be done with regard to that matter.

4152. (*Chairman.*) Then, as to suing *in formâ pauperis*. What is the point with regard to its being the same as in the King's Bench Division?—At the present moment there is a difference. In the Divorce Court, when solicitors and counsel are engaged, fees are allowed to be charged, or fees are paid whether they are allowed to be charged or not. In the King's Bench Division the difference is that solicitors and counsel are assigned and no fees are paid. I think that might be the proper alteration to bring us into line with the King's Bench Division.

4153. Then you do not approve of the suggestion to try cases at the assizes?—I do not, my Lord. I think it will not make much difference if you try a case at the assizes. Some counties are very large, and the witnesses will have to go a considerable distance, and the question of whether they come to London or whether they go to the assizes, I think, makes a very small difference.

4154. The next question you deal with is the question of separation and maintenance orders. Will you tell us what you wish to put before the Commissioners on that head?—With regard to separation and maintenance orders under the magistrates, my view is that only in cases in which cruelty is defined by the Act, and where desertion for two years and upwards, should an order be made that the wife is no longer bound to live with him, and an order for maintenance should be made. With regard to all summonses under that Act, I should prefer that an order should not be made at once. I quite realise that in some cases it is absolutely necessary to make an order for the protection of the woman, but in a great number of cases I do not think that the immediate protection is necessary. What I feel is this. A great number of these summonses are issued in a fit of anger, and if the matter is dealt with at once a separation order is made. I should like to see the magistrate, when the application is made, unless he thinks it is absolutely necessary to grant the wife immediate protection, have power to adjourn the summons for some three months and order a sum to be paid for the wife's support during that time.

4155. A maintenance order instead of a separation order?—I should like to say more like alimony pending suit, so as to give the parties an opportunity of considering the matter. Of course, if the husband did use any violence in the meantime I should allow the summons to be restored at once and the matter disposed of.

4156. That leads me to ask you do you consider separation a good remedy?—I think in certain cases, yes. I think the law with regard to separation requires some alteration. I have known in my own experience a good many cases in which people who were entitled to a divorce would not, or did not, desire to go for a divorce, either on religious grounds or other grounds, and when it has been pointed out to them that if they

did not go for a divorce the only allowance the woman could get would be an allowance for joint lives, and when it was pointed out to her that the husband after the separation might get rid of the whole of his property, and she might be left penniless with her children, then in some of the cases the wife has in the end consented to go in for a divorce.

4157. That is to say, there is no power in judicial separation cases to order a secured sum?—No; and that is a matter I was going to bring before you later on. Therefore, I think separation orders are of use also in cases where there has been violent cruelty and the wife requires protection.

4158. What is your view, though, from your experience, as to the effect of permanent separation orders—whether judicial separation or separation orders, or by deed, as compared with a complete dissolution of the marriage tie?—Of course my personal experience would be very slight. The only experience I have in regard to—I will take divorce first. In a great number of cases in which I have appeared for a person who has obtained a divorce and they have married again, the people have come back to the court and required a second divorce. If I may illustrate it—the husband, having been divorced in the first instance, marries again, and I have appeared frequently—perhaps frequently is too strong, but in a good many cases—where the second wife has come for a divorce. That, I think, does not show that divorce leads to morality. With regard to judicial separation, the only experience I have had is about four or five cases where the wife has obtained a judicial separation, and the husband has afterwards tried to stop the allowance on the alleged ground that the wife had misconducted herself after she had obtained the decree. I say four or five; that is all I have had in 30 years' experience, and in every one of those cases the charge failed. Therefore, my experience does not go to show that separation leads to immorality.

4159. What is the position of the husband in those cases?—I think, of course, if the legislation is to be in favour of putting the guilty party in the position to prevent him continuing immorality by sanctioning another marriage, that is another matter.

4160. Those cases you speak of are where charges are made against the wife to try and get rid of the payments to her?—Yes.

4161. But was the husband guilty of immorality, or not?—I cannot say that I remember now.

4162. Well, the next question is the question of publication. What do you say about that?—Well, I think this is a most difficult question. My own view is that it is in the interests of the public that divorce cases should be published. I think it often leads to evidence being obtained upon which justice in the end is brought about. I am afraid if there is any legislation with regard to stopping divorce cases being published—if it comes to simply giving the names of the parties and the result, that newspapers then would not publish them at all, and I think it is in the interest of the public that it should be known. I think myself that it does have a wholesome check upon people. There are a good many cases which we hear of in which the parties are not living happily together, and either the husband or the wife goes and misconducts him or herself, very often with the object of relief being obtained thereafter. I think that would be increased in certain cases if there is no publication. I think it is a very great check upon people if they know that if they do go and misconduct themselves, or if they are guilty of cruelty, that they run the risk of having it published to the world.

4163. Your note has a point about details. Perhaps you will say what you think about that?—With regard to the papers, I see myself I do not know that I could complain of the detail that is given. I understand there are certain newspapers which go into too much detail in these matters. I do not think the publication of the details is in the interest of the public, but the difficulty I see is how you can by legislation stop certain portions. It would be very difficult to leave it to the judge who is presiding at the trial to say that this particular piece of evidence should not be published, and this should be.

4164. I should like to ask your experience on two points mentioned to us: the deterrent effect of publicity in procuring evidence—that witnesses will not come. We have had it before us that they will not come and give their evidence, or only give it in such a way that it does not make it worth while calling them?—I think it depends very much on how the witnesses are approached. I mean I have had cases in which a witness has declined to give any evidence, and declined to come into court; but I have always found—or in nearly all cases—that as soon as a subpœna has been served upon him the witness is ready to disclose what the real facts are.

4165. Do you mean you have found reluctance to give evidence because of publicity?—I cannot say it was because of that, but you go to witnesses and they say, "Oh, we don't want to be witnesses in the "Divorce Court," and refuse to give evidence; but in the majority of cases if you serve them with a subpœna you can get a proof from them.

4166. A willing proof?—Yes.

4167. It is also suggested by one witness that it has a deterrent effect on the parties themselves—women, for instance—bringing their suits at all?—I cannot say I know that. The only time I remember with reference to that was a question of when the parties were being sketched in court. I have heard complaints with reference to that; I have not heard complaints as to the other. I have known people say that they desire to have their case not reported.

4168. The next point you refer to is alteration in the present law. Permanent insanity, I see you suggest, should entitle to a divorce?—With regard to permanent insanity, the reason I have included that is on this ground. There have been a good many cases in which insanity has broken out, either just before the marriage or directly after the marriage; and in some of those cases—the majority of them—the court has refused to grant a decree of nullity.

4169. You were supposing there had been sufficient power to consent to the marriage?—Yes, my Lord. Now I think in that class of case, where the insanity commences in a very early part of the marriage, if it is not possible to get it on the ground of nullity, which I would prefer to get it upon, I would give the right to get a divorce, where it is permanent and permanent only.

4170. Then the next is drunkenness of either spouse should be evidence of cruelty?—I have not put habitual drunkenness, because it is so difficult to ascertain what habitual drunkenness is; but I think there is more misery, and I may also say pain, caused by constant drunkenness than anything else. I would not say that drunkenness itself is sufficient cruelty, but I would give to the judge who tries the case power to take the drunkenness into consideration, and if one of the parties is constantly drunk, and there are threats or some slight evidence of cruelty in addition to the drunkenness, I would allow the judge to find cruelty—including in it drunkenness.

4171. That amounts to saying it should be treated as an element for finding cruelty without necessarily requiring at the moment of drunkenness evidence of physical injury?—That is so.

4172. Then with regard to the next point you mention—the Ogden *v.* Ogden case—that an alteration of the law is required. Tell us the point you wish to make with reference to that?—At the present moment, if an English woman marries a Frenchman in England, and the Frenchman is under the age of 25, that marriage is good according to English law, but the Frenchman can go over to France and obtain a decree of nullity on the ground that the consent of the parents or the guardian in France has not been obtained, and get a nullity there; and the English courts have held that as the contract was made in England, and it is good according to English law, that the woman is married here; and I should like to see the law altered in this respect—that in the event of a foreigner getting a decree of nullity in a foreign country, that the courts here, on production of that decree, should hold that the marriage is null and void according to the English

law; if not, you have them husband and wife in one country and not in another.

4173. Then the next point is a point of practice; that a woman charged should have notice of the charge unless the court otherwise directed, but that is in order to protect herself?—Yes; under the present law, which was amended to meet a case two or three years ago, a woman has the right to intervene, but there is nothing to give the woman notice of the charge, and I think every woman who is charged ought to have notice unless the judge——

4174. That means a woman who is not one of the parties?—That is so.

4175. But who is brought in by the charge against the husband?—Yes.

4176. There is no obligation to give her notice now?—No.

4177. Then the sixth point you have is a question of power to make orders as to property. Perhaps you will explain that?—I think that the principal people who suffer after divorce are the children, and I think with regard to all alterations in the divorce law, one of the principal things to consider is the children, and how they are affected by the divorce. At the present moment, if a wife obtains a divorce the chances are that both the husband and wife marry again. The children are injured by that, and I should like to give power to the divorce judge upon every divorce where there is property, to be in a position to order a settlement upon the children. Where the parties marry again, they frequently have children by the second marriage, and the children of the original marriage are frequently left out from receiving any benefit. I should like to protect them by——

4178. There is power at present to order settlements in that direction?—There is, but this is one of the unfairnesses of the Act. Where a wife has been guilty of misconduct the court has power to order a settlement on the husband and children, but where the husband has been guilty of misconduct the court has no power to order a settlement upon the children; it has upon the wife by securing maintenance.

4179. But it has power to vary an existing settlement?—Yes, but no power to make a fresh one.

4180. Only in a case against the wife?—Yes.

4181. It has power to order him to secure money to the wife?—Yes.

4182. But not power to order him to secure money to the children?—No.

4183. Then the last item is in regard to cases in which you do not favour changes in divorce in favour of the wife?—Well, I am against allowing a wife to obtain a divorce on the ground of the husband's misconduct only. I see it was put—on Saturday, I think—before this Commission in a way that I quite agree with; though I think the sin is the same, I think the injury is very different. Therefore, I should not be in favour of granting divorce on the ground of the husband's misconduct only.

4184. Would not you allow the wife to have a determining power as to whether the injury was what she considered sufficient?—No, my Lord, I would not.

4185. How far would you go with regard to this. Would you allow it in the case of adultery if it was continuous?—I should not.

4186. Not even if the husband had a woman living in the house with him?—No.

4187. Unless there was an added cause—cruelty or desertion?—There must be either cruelty or desertion; or bigamy and adultery.

4188. But do you think it right, if a woman married and the husband brought a mistress into the house to live with her, that that should be no ground for her to obtain a divorce?—I think if a mistress was brought into the house that would be legal cruelty.

4189. Would not you put it on a more substantial ground?—I think then there would be injury to health, which would certainly be legal cruelty.

4190. Let me put another class of case—where the husband takes advantage of servants, not only once but more than once. Do you think that class of case is one where the wife should not have relief?—I think that comes within the same class of case as bringing a mistress into the house; I think there would be injury to the wife's health, and divorce ought to be obtained on the ground of that—cruelty and misconduct.

4191. Putting it on the ground of cruelty is rather a shadowy way of putting it, I should have thought. Would it not be better to take the bolder course and say this is such a grave offence that it ought to give ground for divorce?—Well, you would encourage and increase divorce, which, in my opinion, is against the interests of the children of the marriage; my view is that it is the very worst thing for the children themselves, and, therefore, I should not feel inclined to increase it.

4192. Dealing for a moment with the children—one wants to probe this to the bottom—would conduct of that kind, continued at the house, without cruelty, be such as to leave the children in a satisfactory position?—I quite agree it would not; but I think you have a remedy under the present law as it stands.

4193. Then, with regard to desertion. I should like to ask you: we have had a lot of cases brought before us or suggested where the husband or wife, as the case may be, disappears to a colony or to America, and is not heard of again; in some cases heard of and found to be living with another, and in some cases not heard of. What would you say about that?—I would not grant divorce for desertion at all.

4194. Not at all?—No; I should only grant it coupled with misconduct.

4195. Is it a fact (I should like to know this from your experience) that you do get a great number of cases where the husband or wife, as the case may be, goes off to the colonies or to America?—I have had a certain number of cases, but I cannot recollect any case where the husband was not traced.

4196. That is because at present it is no use trying to divorce him until you trace him?—Yes.

4197. But do not you suppose there must be many cases where he cannot be traced. Secondly, supposing he is traced, it is a great expense to prove that?—I agree it is.

4198. To find him and to prove the fact?—Yes.

4199. But I mean with regard to the proving of the facts?—I have had a good many cases in which people have been traced to various parts of Australia and to various parts of America in which we have found that the husband was living with somebody else, and we have proved the case by affidavit, by leave of the court.

4200. But I want to get at something really definite about this. Supposing it is impossible to prove that particular feature by want of tracing, but that the man or woman has gone for several years, would your view be that the tie in England should not be dissolved although the person left behind has no chance ——?—I suppose it must have been carefully considered before the Divorce Act was passed.

4201. But, you see, we are reconsidering it, and we have had the law of Scotland before us, which seems to meet a difficulty of that kind?—Yes.

4202. Would you maintain that if the husband and wife cannot trace or prove adultery you would leave the parties tied?—Yes; I would give a judicial separation, if it were of any use.

4203. Then, as to cruelty; you do not favour that as a ground alone?—No, my Lord.

4204. Then, the last item. The petitioner's adultery should be a discretionary bar. Perhaps you would amplify your views about that, because that is a very important question?—I think the difficulty that has arisen with reference to this is because of the construction the court has put upon the 31st section of the Act of 1857. I read that Act to give a judge of the divorce court absolute power to use his discretion in every case that comes before him. In the early times, after the passing of the Act of 1857, the divorce judges laid down certain rules for themselves under which divorce should be granted, notwithstanding the petitioner's adultery, and the result is this. Of course there has been innocent adultery; that is, where one party thought the other spouse was dead and has gone through a ceremony of marriage, and then found the other spouse was alive; the court has always exercised its discretion in favour

of that person. Then the court has exercised its discretion in favour of a wife where the husband has conduced to or connived at her misconduct. But the court has not granted a decree to the husband where he has been guilty of one isolated act; it has refused to grant a decree. I think, myself, the Act is sufficiently wide, and that the judge of the Divorce Court ought to exercise his discretion in each particular case. He ought to go into the circumstances under which the misconduct was committed, and if he can find any excuse for it, then it would be a case in which the discretion would be exercised. But if it is a case in which the husband or wife has been continuously living in adultery, then I think it is a case in which the court should not exercise its discretion in that petitioner's favour.

4205. That is to say, the petitioner's own misconduct should not be an absolute bar, but the discretion should be exercised in considering the whole of the circumstances of the case?—That is so, my Lord.

4206. On what principle do you arrive at that?—That seems to me to be the meaning of the Act of Parliament. It states, as far as my recollection goes, that upon proof of certain things, and upon proof of the petitioner's misconduct, the court is not bound to grant a divorce.

4207. What I mean is this: Supposing it did exercise its discretion having regard to the circumstances, and those circumstances disclose guilt on both sides, but still guilt in circumstances in which the court might exercise its discretion, is the principle on which it ought to exercise its discretion that it is no longer wise for the parties to be tied together?—I think, first of all, there must be some excuse found for the misconduct.

4208. I am assuming an excuse found which would justify the judge in saying, "Well, I think I shall "grant a decree notwithstanding that you yourself have "done wrong." What is the foundation of giving that discretion? Is it that it is no longer for the benefit of the parties to the suit, possibly, that they should remain together; otherwise why should one say they may have it?—I suppose the ground has been that it is to the benefit of the parties, and that it has been so slight it should not be a bar. If you take the case of a husband or a wife at a very early stage of their married life committing one act that had been forgiven by the other party, and they have lived together for some twenty years, and at the end of the twenty years, say, the husband goes off and lives with another woman. In that case the one act of the wife, though it had not been conduced to, I do not think ought to deprive her of a divorce if she is entitled to it on other grounds. At the present moment condonation has no weight.

4209. The basis of it can only be that it is no longer an advantage to leave those two parties tied together?—Yes, that is one of the reasons, and the other reason is the case I put, that it has been forgiven and they have lived together, and it ought to be wiped out.

(*Chairman.*) I think that finishes your proof. Personally, Mr. Barnard, I thank you very much, and I have no doubt the Commissioners will, when they have finished with you.

4210. (*Mr. Brierley.*) One word with regard to the equality of the sexes in cases of misconduct. I understand you say that not only juries, but judges, are rather inclined to grasp at only slight acts of cruelty, when a case of adultery is proved by the wife, in order to justify a decree?—I say if the cruelty is just on the border line—that it is slight acts of cruelty, where the husband has clearly been guilty of adultery, both the judge and the jury are inclined to find cruelty.

4211. You might almost say they are inclined to stretch the law of cruelty in favour of the wife?—I would hardly call it stretching it when you get a case just on the border line.

4212. During your experience at the Bar, has there been a tendency for that to increase?—No, I should say it has always been about the same since I can recollect, which is about 30 years.

4213. I mean if there is that tendency on the part of juries, would not it really be better to abolish the necessity of cruelty being proved in such a case?—I do not think so, because then you would have a divorce entirely upon misconduct, which is against my view.

4214. There is one other matter. You have told us of certain alterations in procedure that you propose. Have you formed any estimate as to what saving in cost in an undefended action those proposals would mean?—No, I have not.

4215. We have heard from other witnesses that the cost of an undefended action—say, from the north of England—would be something over 50*l.* Have you formed any sort of estimate as to what amount of that 50*l.* would be saved by your proposed alterations?—No, but I think that 50*l.* for an undefended case from the north of England is rather high. It all depends on the case itself. Supposing it is a husband's case in which one witness is necessary, I do not think it would come to anywhere near 50*l.*; it all depends on the particular case. There are some undefended cases in which 50*l.* or 100*l.* would be expended before you would get any evidence at all.

4216. No, the case that was put was a case which was undefended, and with about two witnesses in addition to the petitioner?—Well, I should have said that was high.

4217. You cannot tell us what amount of saving your proposals would mean?—No; but I think, for instance, you might in cases in which the parties only have two or three pounds a week have an alteration by only half fees being charged, and you might make the fees in accordance with the income of the parties. In some cases, though it is a case just above the pauper line, you might say in cases where the incomes are under a certain amount no court fees would be charged.

4218. (*Judge Tindal Atkinson.*) I do not think you know much about the county courts at present?—My experience of county courts has been very slight. I think I went to a county court once where I was kept—I think it was at Edmonton—until about 8 o'clock at night, when I found there was no chance whatever of my case being tried.

4219. May I ask how many years ago that was?—It was about 28 or 29 years ago.

4220. Will you kindly come down to Edmonton again and see if you have a different experience. Now, you have said something about county court juries. I gather you have not a very high opinion of them?—Not very.

4221. May I ask you how you obtained your experience of county court juries?—My experience with regard to county courts, as a rule, has been simply what I have been told by members of my own profession, not from personal experience.

4222. Then perhaps you would accept my experience about county court juries?—I should be delighted.

4223. I have had greater experience than you, and I cannot agree with you at all on that point. Now, with reference to experience; that, of course, has to be gained by every judge—High Court and county court judge?—Yes.

4224. And is there any reason why a county court judge should not, in a certain limited time, gain the same experience of divorce cases as he has to gain in other complicated matters that come before him?—No; but I suppose any number of cases which are brought to the county court would be small.

4225. That is your view of the county courts, is it?—I think if a county court judge were to sit in the Divorce Court for a month or two, he could do the work admirably.

4226. You admit that county court judges have to deal with far more complicated matters than arise in divorce?—Oh, yes, I think they do.

4227. Then you say there would be a great increase of costs owing to the constant adjournment of the cases. Why do you say that?—I am informed that a great many of the county courts are overworked at the present time, and that cases are adjourned from time to time because they have not time to take them.

4228. Does that apply generally with regard to county courts in England?—That I do not know.

4229. I suppose you do not know the average number of sittings of the county court judge in the course of the year?—No, I think it would be, in most places, about four days a week.

4230. Suppose you take the average sittings of county court judges throughout the kingdom at 160 days a year, there would be, of course, means of extending that, and I suppose you would agree to make the county courts efficient for the purpose of taking divorce cases would be merely a matter of alteration of machinery?—Yes.

4231. And that there could be 60 county court judges, but there are only 55 appointed, and therefore the Lord Chancellor could appoint five more if there is too much work?—I did not know that.

4232. With regard to this question of uniformity of treatment; might not that be got over by the transcript of the notes of the cases tried in the county court being sent up to the registrar, and for him to report to the president of the court those cases in which he thinks there is no evidence, or those cases in which he thinks there is not sufficient evidence, to justify a decree?—I think that would be a very unsatisfactory proceeding. First of all, I understand that means this: that the person is to be represented before the county court judge with regard to the hearing of the evidence, and then the president or the judge of the Divorce Court is to be the person who is to grant a decree, without hearing any counsel or advocate on the part of the party.

4233. No, I am assuming the decree is granted by the county court judge, and then a transcript of the notes of the evidence is sent up to be examined, and the registrar points out to the president that there is no evidence to support that decree, and then the president may confirm the decree or send it to a new trial?—That means that this would be a court of appeal without any hearing at all by either party.

4234. If that were done, at all events there would be an opportunity for protection on the question of uniformity?—And I should think the president's time would be taken up entirely by reading the evidence that had been given before the county court judges, and we should want another judge to try our work.

4235. How many registrars are there?—Four.

4236. You think the registrars should travel to the country and try the divorce cases?—I would suggest, as I thought I had suggested, that a judge should have the power to direct where the case should be tried, and he should go and try it, but in certain cases he might have the power to direct one of his registrars, who has been brought up in the practice, to go down and try it.

4237. Have you worked out that scheme?—Not in detail.

4238. Where should you propose that the registrar should sit; at the assize town in each county?—That would depend upon where the case was. If the assize town was 20 or 30 miles away, I should try and find some place nearer.

4239. Of course, you are assuming that the registrar would go down and dispose of the work which would otherwise go to county courts?—Yes.

4240. And you must fix some centre where they are to go if you are to save the expense to suitors. Where do you suggest in each county the registrar should sit—either the judge or the registrar?—I suppose it would be possible to sit in the county court if that is not sitting.

4241. If a registrar went round and sat in every county court in the kingdom, or the principal county courts in the kingdom, he would not have time to do all the work, would he?—That would depend if there is going to be that large increase of work. I do not myself think there is going to be that large increase of work; I might be mistaken.

4242. Then the county courts might dispose of it without being overloaded?—They are overloaded already, and the unfortunate divorce people would be put at the end.

4243. That is a matter of machinery and arrangement. Cases could be fixed for certain days, and come on on days they are fixed for. Then the remedy you provide is that there should be certain centres at which the registrar should preside and try cases. May I put a case to you. Supposing a husband is guilty of the grossest immorality in his own house, and he does not misconduct himself towards his wife by cruelty, and maintains her so that the woman has no opportunity of getting a separation order, and she cannot afford, and is told she cannot afford to come to London to get any relief; how would you in that case give the woman relief so as to get the children immediately out of the custody of the father?—In the first place, I do not agree that the wife could not under the present law obtain relief.

4244. Well, what relief can she obtain?—I think she could obtain the relief of divorce. I think a man who brings a woman into the house under the circumstances you have stated has in law been guilty of cruelty.

4245. Supposing a case which has been mentioned to me by an advocate practising in my court, where the woman has not the means of bringing a case for divorce at all, and she cannot get the children (without having to come to the High Court judge) out of the custody of that man, whereas if I had jurisdiction she could come into my court, which is only a few miles away; she could commence her proceedings and obtain an order for the removal of her children from the father. Is not that a case that shows you the county courts should have jurisdiction?—I do not know how far the Edmonton district goes, but——

4246. I am speaking of a case where she is 70 or 80 miles from London. My district extends as far as Harwich. Do not you think in such a case as that a woman ought to have some relief, and the children be taken away from the contaminating influence of the father?—I should have thought under the present arrangement she could have done it, especially if the fees are reduced. Fares are not very expensive from Harwich to London.

4247. The costs of a divorce case, even from that district, would run into at least 30*l.* or 40*l*?—I should say not.

4248. That is the evidence we have had. Now as to the reduction of the fees; have you considered the position of the Treasury?—I suppose the Treasury would oppose it, as far as I understand, every time.

4249. Do you not think they would oppose it very successfully?—Well, if Parliament chooses to alter it they can do it.

4250. (*Sir Lewis Dibdin.*) It was put to you, Mr. Barnard, whether you did not think that the existence of so much collusion pointed to the fact that the law did not satisfy the needs of the parties as it is at present?—Yes.

4251. Is not that a proposition which admits of very wide application?—I think it does.

4252. May I ask you to consider in this context a case which I suppose is not an uncommon one, where a husband and wife, without any matrimonial offences, become absolutely sick of one another; perhaps married very young in circumstances of haste and unwisdom, and both want to get rid of the marriage. Equally that would be a case where the law does not satisfy the parties, and collusion would be very easily accomplished?—It would.

4253. In your view, it is really an accurate test of whether the law is right or wrong, whether people like it or not, is it?—I do not think so. I think, however the law is altered, unless you give it to persons who decide that they will not continue to be married—if you leave it to them to arrange that there should be a dissolution, there will be an end of collusion—unless you go to that extent I think collusion will remain. It may be less if you give greater remedies for obtaining divorce.

4254. It has been suggested to us here by one, and perhaps two, witnesses, that divorce by mutual consent is the right course, and ought to be established by law?—Yes.

4255. If that were done I suppose the law of collusion would necessarily vanish?—Yes.

4256. But until that time arrives I suppose it is necessary to take some safeguards against collusion?—I think so, myself.

4257. Now, if I understood your evidence accurately, you are of opinion that the county court would not be a desirable tribunal for these cases on account of the large number of judges with small training in this particular subject, and the different views that would be taken on matters that are more or less matters of discretion?—That is so.

4258. Would that apply to such matters as the proof of adultery itself? I mean a case where adultery is charged, where one judge might take one view of the evidence and another judge a perfectly different view?—Certainly.

4259. It was suggested to you; I think, in answer to that, that county court judges already might have to deal with an issue of adultery on the administration—I think it was supposed—of a separation deed with a *dum casta* clause. Let me follow that out a little. First of all, the county court would only have jurisdiction, would it not, if the sum settled were under 500*l.*?

(*Judge Tindal Atkinson.*) You are mistaken; the action ——

(*Sir Lewis Dibdin.*) My friend will kindly allow me.

(*Judge Tindal Atkinson.*) It is a misleading question.

4259*a.* (*Sir Lewis Dibdin.*) I think the county court would only have jurisdiction to administer the trusts of such a deed if the amount settled were under 500*l*?—I should have said the county court might have jurisdiction further than that, because it would only be suing upon the covenant.

4260. I am going to that, Mr. Barnard. First of all, to administer the trusts, the sum settled would have to be under 500*l*?—Yes.

4261. Secondly, it is conceivable that a party to such a deed might sue in respect of a particular payment, which, if under the county court limit, would come into the county court?—Yes.

4262. Does your experience enable you to say if such actions are common?—No, not at all.

4263. Have you heard of many?—No, I have heard of very few in the High Court, and I cannot say that I have heard of any in the county court.

4264. Is an action to administer the trusts of a separation deed at all a common proceeding in the Chancery Division of the High Court?—Not to my knowledge.

4265. Nor to mine. Now it is suggested that adultery might become an issue in a magistrate's order in a court of summary jurisdiction as a defence to a separation order. Does your experience enable you to say whether, as a matter of fact, that defence is very frequently raised in the sense of being gone into?—I do not know that I can give any personal experience about it. I mean my knowledge only comes from appeals in those cases, and I have not had a great number of those cases, but there have been one or two where the defence of adultery was raised.

4266. Now, would you say, as to adultery and cruelty, the separation orders generally, when they come to you on appeal, are very roughly dealt with in the magistrates' courts—the issue of fact?—I think those that come from the country certainly are: the appeals from London from the magistrates are very slight indeed; they are done well in London as a rule.

4267. My question only refers to the country courts?—Then a good many of them are, certainly.

4268. Does it really show any real capacity for dealing with issues of this kind in the county courts, that both the county courts and the magistrates' courts have in certain cases to deal—well or ill, rightly or wrongly—with similar issues?—Well, I have no experience with regard to what county courts have done.

4269. I take it your view is that, for divorce, adultery should always be presented as one of the grounds?—That is so.

4270. And that is the governing ground of your view on the whole subject?—Yes.

(*Chairman.*) Pardon me. There is permanent insanity.

(*Sir Lewis Dibdin.*) If my Lord will allow me, I am going to deal with that now.

(*Chairman.*) But that is not a case of ——

(*Sir Lewis Dibdin.*) I think it is, in Mr. Barnard's view.

4271. You have dealt with incurable insanity, but you deal with that rather as a question of nullity?—I tried to explain you should only allow it in cases where the insanity started very early in the married life, and I should grant it because I think in all probability the insanity had started before marriage; but the court, not being satisfied that the person was unable to make a contract, has held the marriage good. I should extend it in that view.

4272. That is really an extension of the present nullity laws?—Yes.

4273. And not really a question of divorce?—No.

(*Chairman.*) If it is not existing at the time of the marriage, but comes on shortly after, that would never be a question of nullity.

(*Sir Lewis Dibdin.*) Not now; but Mr. Barnard means it really shows that there was insanity at the time of the marriage; therefore, it would be nullity or *quasi* nullity.

(*Chairman.*) He said if it came on early in the married life.

4274. (*Sir Lewis Dibdin.*) You would infer that there was probably the incapacity at the date of the marriage, though it could not be proved?—I think so.

4275. Now you do not think desertion ought to be a ground for divorce, by itself. I daresay you recognise, as we all must, that cases such as the Chairman has put to you involve a great deal of suffering and even of hardship on the innocent party?—They do.

4276. But is that in itself a ground for dissolving a marriage?—It never has been in this country up to the present; and in the interests of the children I am opposed to increasing it to that.

4277. I suppose you look at the marriage contract not only from the point of view of a particular hard case, but from the point of view of the general welfare of the community?—I have tried to look at it from the point of view of the general welfare of the community, and also specially—what I think is a great thing to look at—from the point of view of the children of the marriage.

4278. And I suppose, do what we will and alter the law as we may, we can never prevent the old notion of marriage being a taking for better or for worse, having very sad consequences sometimes?—Certainly.

4279. But that is a matter which must be faced?—It must.

4280. (*Mrs. Tennant.*) I gather you think that adultery on the part of the wife should be a good ground of divorce for the husband; but you would not make it equally so against the husband?—That is so.

4281. And you take that line because the woman might introduce a false child into the family?—That is one ground.

4282. And you look upon that as a very grave social offence?—I do.

4283. I suppose one of the gravest?—Yes.

4284. But her husband might by his single act of adultery introduce a false child into another family?—That is possible.

4285. In fact, he might introduce a false child into several families?—Yes.

4286. And yet you do not think that, in addition to the sin against his wife, that social element ought to be taken into account?—I do not.

4287. I notice you recommend that where a woman is charged in divorce proceedings, notice should be given to her of the charge unless the court should otherwise direct. Would you say why you would give the court discretionary power?—The reason of that is that sometimes when the charge is made it is with a woman unknown. I mean you would have to put it before the court then, for the purpose of seeing if you could trace the woman or not, and if the court was satisfied you could not, it ought to allow you to proceed without giving notice. There are also cases where a person's name is known and the person has disappeared. Then you ought not to stop the proceedings, but you ought to give the judge the power to allow it to go on without giving the notice.

4288. In speaking just now of insanity you recommended it should be a ground of divorce if it started in early days, because, you said, it probably existed prior to marriage. What would be your view if it could be proved (as I have no doubt we shall have medical evidence to prove) that insanity, though starting in early days, did appear subsequent to the marriage?—There I should rather stretch a point, because I do not know how it is possible to say when the mind has become so unsound that you could not recognise a contract made by that person. I mean there is always a stage where it is very doubtful; and then there comes the stage when it is perfectly clear. I should rather extend the case so that, where it appeared doubtful as to whether the person had the capacity, to allow the divorce notwithstanding that that person might have been able to enter into the contract.

4289. I think medical evidence would say, there are cases in which there is no doubt that insanity subsequent to the marriage was due to a definite medical cause?—There are such cases, I agree, but my view then would be not to grant a divorce upon it. I think it is one of those cases where the person has married for better or for worse. It is very unfortunate.

4290. Then, you say you think the alteration of the status of the parties to a marriage is so important that it should be only dealt with by the High Court. You do realise that the separation, which can now be granted by a borough justice or a county justice, may have a life influence upon the marriage status of those parties?—Yes, but they still remain husband and wife; they have not altered the status in the view that I have mentioned to you.

4291. You do not recommend any alteration of the courts in which the separation cases should be tried—I am not speaking of stipendiary magistrates now?—I am one of those who would be very glad to see the stipendiary magistrates appointed all over the country, and do away with the others; I think it would be an advantage to the country.

4292. Also in your recommendation you say corroborating evidence might be taken by affidavit. Have you considered the danger in taking corroborating evidence on matters of this kind by affidavit?—I have, and what I think about that is this: that if the judge has the principal person before him he would be able to judge pretty well whether the evidence that is coming in corroboration is correct or not. If the court has a suspicion it is a false charge, they can always say, "In this particular case I want the person "who has made this affidavit before me."

4293. I think you were unable to say to what extent your scheme, if carried out, would reduce the cost. Have you in your mind any sum as a reasonable sum to be paid by poor people for divorce?—No, I have not.

4294. (*Lady Frances Balfour.*) Mr. Barnard, we have your view that adultery as between husband and wife is a different thing altogether, and that you would excuse it on the part of the husband if it is with a mistress in the house or a servant in the house, or promiscuously outside the house; and you think that that should not be a reason for a divorce?—I do not think I said, Lady Frances, I should excuse it.

4295. It would not be a reason for divorce alone?—I said my view is at the present moment if a man commits adultery and brings his mistress to his house he is guilty of cruelty and adultery; and I think if he commits misconduct with a servant in the house then that is cruelty also in the eyes of the law.

4296. I was coming to that, but it seemed that you preferred the word cruelty to adultery; you would give relief under the head of cruelty, though you do not allow it to be called adultery?—Yes, I think it is both.

4297. One of the strong reasons you had for disliking divorce, as we all do, is because of the children?—Yes.

4298. But now in the case of a husband committing adultery with a servant in the house, it is too common in a certain class of service that there are children by those servants. Do not you think that those children are under a peculiar disadvantage? You are considering the legitimate children, but do you consider the position of the illegitimate children at all?—Certainly.

4299. And would you consider the example and knowledge on the part of the legitimate children of these illegitimate children would have an enervating effect on the legitimate children?—I think it would.

4300. You think it would?—Yes.

4301. Well, do not you think it would have a very bad effect on them living in such surroundings?—I think it would, but my view is that at the present time the wife could get a divorce on the ground of cruelty and misconduct, and then she would get the custody of the legitimate children, and, therefore, you would not bring them into contact with the others.

4302. She would get them under a different head, and I do not see why adultery is not the worst form of cruelty that comes under that head?—Well, I think the misconduct might be an act that the wife did not know anything about. It might be an act committed when the husband was right away; and if you give——

4303. Presumably she would know about it or she could not bring it into court?—Well, later on. If I might take the case of someone from the north of England coming to London and committing an act of adultery in London, and going back to his wife, and some years afterwards somebody tells the wife they have seen her husband in town and he was going with a woman, then the wife asks the husband and he admits it. I do not think that would be a case where I should give an absolute divorce.

4304. (*The Archbishop of York.*) I want to ask a question about the costs, Mr. Barnard. I think you suggested that the court fees might be very largely reduced, but you were not able to mention any sum or standard by which they might be reduced?—That is so, your Grace.

4305. Do you think they might be reduced, say, to half?—A great number of people object to suing *in formâ pauperis*. I should remit the whole of the court fees in the case of incomes under 2*l.* a week; and I should also reduce them by a half where the income is about 3*l.* a week; and I should make some line with reference to the incomes of the parties.

4306. That is what I wanted; whether you had any scale. Then I understood you to suggest, in addition, in the High Court solicitors and counsels' assistance should be assigned and no payment permitted?—That is so *in formâ pauperis* cases.

4307. Would what you say of the power of the court to pay for such witnesses as it felt ought to be summoned be in the interests of justice?—Well, that rather opens a very wide subject, but it seems to me that is the only way in which it is possible to put the rich and the poor on the same footing. I do not know of any other way in which you could do it.

4308. Would it be your opinion that if in some cases the fees were reduced to the smallest point and counsel and solicitors were paid for and some important witnesses were paid for, the costs in the High Court would be very substantially reduced?—Oh, they would, certainly.

4309. Would it express your opinion to say that some degree of expense is necessary in order to preserve for the poor a high and worthy manner of treating the subject of divorce?—I do not quite follow that question, your Grace.

4310. I mean you would agree that whatever advantages there have been in having divorce dealt with by a tribunal of the character of the High Court ought to be within reach of the poor?—That is so.

4311. That it is not necessarily in the interests of the poor that their marriage status should be dealt with by tribunal or under methods of a less high and satisfactory order?—That is so.

4312. Therefore, whatever reduction of expenses there may be, it would always be necessary to pay something for a high local procedure in such matters?—Yes.

4313. Therefore, some degree of payment may be said to be in the interests of the poor?—That would be so.

4314. With regard to what you said about separation orders and judicial separations, do you know of

some concrete cases within your own large experience in which either party—wife or husband—has objected to divorce on principle, but have welcomed judicial separation?—I have had a good many cases of that kind.

4315. I think an eminent solicitor suggested that these cases are so few as to be scarcely worth considering. That would not be your view?—That would not be my view.

4316. If judicial separations were abolished it would deprive certain persons, who have conscientious convictions about a divorce, of a remedy?—It would.

4317. With regard to publication, have you ever considered the suggestion that some of the deterrent effect of the publication of details might be secured without public evils of publication if, with the names of the parties and the result, there was published such an amount of his judgment as the judge in the case thought desirable?—I think that would be putting a great responsibility upon the judge in addition to what he already has in the court.

(*Chairman.*) Might I also suggest to his Grace that in all the undefended cases the judgment consists of nothing but "Mr. Barnard, take your decree nisi"?

4318. (*The Archbishop of York.*) These would not be cases for publication in any case, then; only the name?—That is all the judge says, but, of course, we have to give a certain amount of detail in opening the case and in proving the case.

4319. With regard to insanity; do I take it your view is that it would be extremely difficult to establish degrees of insanity such as would entitle persons to be relieved from responsibility of one another's society?—It is.

4320. You would feel that the case of the wife who was quite harmless but had delusions, but was otherwise capable of understanding who her husband was, would be in a very different position to the wife who was violent and unable to recognise her husband and to know who he was?—That would depend on the extent of the delusions.

4321. But your objection with regard to allowing insanity as a ground of divorce is that it would be so difficult to say what was the degree of insanity?—My view is that there are a great many cases in which the wife or husband is proved to be very peculiar before the date of the contract of marriage. Shortly after the contract of marriage that party becomes totally incapable. At the present time, if a party who becomes of unsound mind can be proved to have known the nature of the contract that he or she was going through, then the marriage is a good one, and I think in that class of case where the person becomes incapable directly after the marriage you might extend the law by granting nullity or divorce in cases of that kind of insanity; because I say it is very difficult to prove that the person was not of unsound mind at the date of the marriage under those circumstances.

4322. With regard to what you said as to the inequality of the sexes. Would you regard anything that involved the wife in continuous misery and indignity as in itself absolute cruelty?—I think it is the worst form of cruelty.

4323. Take a real case of a husband who is known by the wife to be living with another person, but that person is never obtruded on her notice, but she knows of her existence, and the husband is perfectly kind and affectionate and indulgent. Would you say in that case the wife is subject to no misery and indignity?—I should say in that case it might cause a great deal of misery. If it does cause misery and you can prove it is injuring the wife's health, then, under the present law, she would be entitled to a divorce. If it was not causing her misery and was not injuring her health, then the only remedy would be a separation.

4324. But might it not be assumed that anybody who knew of her husband's adultery was suffering misery and indignity?—I should say in the majority of cases, certainly; but in some cases I think there are exceptions.

4325. In the great majority of cases one might assume it?—Certainly.

4326. Then, is it necessary to describe it specifically as cruelty?—Myself, I think it would be much better and sounder to describe it as cruelty.

4327. It comes to the same thing in the end?—It does.

4328. One question with regard to desertion. I understand you are opposed to regarding mere desertion as a ground for divorce?—That is so.

4329. Would your view be that the danger of divorce by mutual consent would be greater than the benefits involved on individuals?—I think if you have divorce for desertion it is practically coming to divorce by consent.

4330. (*The Earl of Derby.*) I have only one or two questions. You mentioned a case of Ogden *v.* Ogden—the question of nullity in France operating in England as being a ground for nullity?—Yes.

4331. Would you extend that to other countries?—I should extend it to all foreign countries. I should, where an English person has married a foreigner and that foreigner goes back to his country and gets a decree of nullity—in all those cases allow the wife or the husband here to file a petition and ask for a decree of nullity in this country.

4332. As you mentioned, divorce is easily obtainable in certain States of America?—Yes.

4333. Would you be willing that such nullity in America should equally apply here?—I am drawing a distinction between nullity and divorce. As far as I know, the question with regard to America is that in certain States divorce is very easy. I do not think it applies with regard to the question of nullity. If a marriage has been declared null and void by the country certainly of the husband, then I think that this country ought to follow it; and I should go further and say even if the foreigner were the lady and she should go to the foreign country and get a decree of nullity, I should allow a nullity to be pronounced in this country.

4334. Now, separation orders. I think I am right in saying where a maintenance order is made at the same time as a separation order, in many cases nothing is paid?—I believe that is so.

4335. And very often the man cannot afterwards be traced?—That is so.

4336. In such cases as those, would you be prepared to see the woman given a decree of divorce if the man had been absent three years and had disregarded the whole of the maintenance orders during that time?—No, I should not.

4337. Naturally your practice has not been amongst the very poor people, but desertion is chiefly amongst that class of people?—I should not say that. I think desertion is in a good many cases in the middle classes and the upper classes, too.

4338. We have had evidence of so many cases where the husband has gone off to America or the colonies?—Of course, that class of case is generally from the poorer classes.

4339. Now, to follow the man and find out where he is and prove adultery must be very expensive?—Very.

4340. And, therefore, clearly outside the means of the poorer people?—Yes, but it is very strange the way the poorer classes do bring their cases even at the present time.

4341. Where the man could be proved to have gone off like that without his wife, or to have been absent three years and disregarded all maintenance orders, and the inference was that he would not return, and he has not communicated with his wife; would not you be prepared in that case to give her freedom?—No, I should not. I think the result would be a very great increase of divorces in this country. The husband and the wife simply have to arrange that the husband should disappear, and the result would be a divorce would be granted.

4342. Although he might be living with another woman in the colonies ——?—There is no evidence of the fact that he is. If there is any evidence of the fact, then the present law gives a remedy.

4343. But there is evidence, on the other hand, that the woman is a married woman and yet an unmarried woman?—Yes.

4344. And yet you would not be prepared to give her any relief at all?—I should not.

4345. Only one other question. With regard to the insanity question. As I understand the case, you would give divorce for insanity only when it could be proved that the insanity existed to such an extent, either apparent or inherent, as to render one of the parties incapable of really understanding what the marriage contract was?—I am afraid that is not quite my view. There are certain cases—I am glad to say my experience is there are only very few, but there are certain cases—where insanity is clear directlyafter the marriage. In that class of case I should feel inclined to grant a divorce by stretching the present law practically on the ground that I believe that the insanity had arisen before the marriage, though the insanity had not come to such a pitch as would prevent the parties entering into the contract of marriage.

4346. That would have to be judged on the facts of each case. You would not put a certain number of years after marriage?—No, I should only have it with regard to a short time after the marriage.

4347. Supposing a man or a woman became hopelessly insane five or six years after the marriage—they might be very young when they were married, and there may be no proof that insanity existed at the time of the marriage; and though the husband or wife might be shut up for the rest of their natural lives you would not be prepared to give any relief to the other party?—I should not, for this reason. First of all, the husband or the wife might recover; they might have had children before the insanity, and then for the person who recovers and becomes quite right to find he has been divorced during the time he has been insane I think would be very hard. Of course, I agree it is a very hard case on both parties.

4348. You do agree the case I put might be a very, very hard one?—I do, certainly.

4349. Do not you think, as a general rule, where a case is said by doctors to be hopelessly insane, it is hopelessly insane?—Yes.

4350. The risk would be very small?—Yes.

4351. But there might be some cases?—Yes.

4352. (*Mr. Burt.*) Just one question. I understand you disapprove of transferring divorce cases to the county court judges, but you quite recognise that the cost of bringing or defending suits in London hampers the poor, and, probably in many cases, the cost is prohibitive with regard to poor people?—Well, I do not know that I should go quite to that extent, and the only question is I do not know, of my own personal knowledge, that a great number of poor people are prevented from bringing their cases to the court. The only way I have been trying to see how it can be tested is to take London itself and see how many poor cases there are brought from London when you have the court at the doors of the people. My own experience was—and I had a great many cases when I was a junior amongst the poor classes—that the majority of those poor cases came from the country and not from London.

4353. And the suggestion you make, in the way of diminishing the costs, you think, would meet the case?—I think you would reduce the expense. I cannot say you would be able to bring it (if there is a very poor person at a very extreme part of England) within their reach, but that is the reason why I give, at the same time, the right of the divorce judge in a case of necessity to go and try a particular case at a particular place—because I think the poor ought to be in just the same position as the rich with regard to being able to get a divorce if they desire it. Therefore, if there was a very poor case an application should be made to the judge, and it should be shown to him that it was a case that came within the class—that they could not bring it up—and that the judge should have power to go down and try it at that particular centre or particular place.

4354. But you are quite decided as to the inadvisability of empowering the county court judges to try cases?—I certainly am at the present moment.

4355. (*Sir George White.*) You have had a number of questions put to you with regard to the adultery of the husband. I confess I am not even now clear what your exact position is. I took down your words in the first instance—that you were against allowing the wife to obtain divorce on the ground of the husband's adultery; not even if the woman was in the same house. Subsequently, it seemed to me, you modified that evidence slightly by treating the adultery as cruelty; is that so?—If I dropped the word I did not mean to say not in the same house. I think, myself, it comes under the head of cruelty, and, therefore, I think she would be entitled to relief.

4356. Then subsequently you said you would not give divorce for cruelty only?—Not for cruelty only, but I take it if a man brings a mistress into his wife's house he commits misconduct, and he also commits cruelty.

4357. The two terms are interchangeable, in your view?—They are in that particular case.

4358. Then may I ask if the law would consider such cases now as cruelty, or would you desire an alteration in the law to enable it to be so treated?—I think if you could show injury to health, which I have no doubt could be shown, that the law can clearly grant relief by divorce.

4359. But why show injury to health where a woman is brought into the house, when you could not show outside?—I should have thought the fact of a husband bringing a woman into his own house where his wife is would be of such a distressing character that it would injure her health.

4360. And you think the law would treat that as cruelty now, and therefore grant the divorce, notwithstanding that there was nothing else than the adultery actually?—That is my view.

4361. Then, with regard to separation. One of the lady Commissioners asked you whether you were prepared to advise the removal of separation cases from the ordinary bench of magistrates. Your answer was you would prefer stipendiary magistrates all over the country?—That is so.

4362. I suppose you would treat that rather as a counsel of perfection having stipendiary magistrates all over the country, and therefore that hardly deals with our difficulties and we come back to the question what would you do under the existing circumstances of no likelihood of getting relief granted by stipendiary magistrates?—Well, in the present state of the law I should do this: in all cases where the wife does not require immediate protection I should alter the law by directing the magistrates to adjourn the summons for three or six months, and I should give the magistrate power during the three or six months to order some allowance to be paid to the wife; and I think in the majority of cases no further steps would be taken under the summons. But in cases in which it was absolutely necessary for the protection of the wife I should allow the magistrate to continue to make the order for separation with regard to cruelty and with regard to where there is desertion for two years. When there is desertion for under two years I should only give the magistrate power to order an allowance.

4363. In cases where at the termination of the three months the conditions were the same?—Then I should grant the separation if the case was proved.

4364. That is practically leaving it where it is. Now, this matter of desertion; have you considered the case from the side of the wife? I suppose the idea of collusion does not as a rule bring about a greater number of the cases—men who leave for America and the colonies, as we have heard many times—and therefore have you considered the thing from the point of view of the wife, where perhaps comparatively early in the marriage (and there may be one or two children) the husband goes away. Do you say to the Commissioners that after a number of years of absence you would not grant separation on the ground of desertion only?—I would grant separation, but I would not grant divorce.

4365. I should have put divorce?—No.

4366. The woman is left on her own resources without any remedy whatever against the man?—The only remedy I would give would be the remedy of separation where there has been no adultery.

4367. What value would that be to a woman in her position?—It depends entirely on the position of the husband.

4368. But I am taking it there is no trace of the husband, and no proof he has misconducted himself?—Then there would be no use at all in it.

4369. Then you leave the woman absolutely tied to a man who has left her perhaps 10 or 12 years to fight her own battle?—Yes.

4370. And she cannot remarry. Do you consider the divorce to be a worse remedy than leaving her in the condition she is in?—I should not grant divorce unless there was misconduct, and here, as you could not prove misconduct (I take the case of a husband having disappeared, and therefore there is nothing to show the life he is leading at all), it would only be a separation or nothing.

4371. Never mind what length of years have elapsed?—No.

4372. One other question, and that is with regard to your answer that you believed the poor should be placed in just the same position as the rich with regard to obtaining divorce. Do you consider that the costs could so be brought down as to really practically place them in the same position?—I do not think you can place them exactly in the same position; I think the only thing is to get as near as you can to it.

4373. You could not get the costs down, confining it to the present Divorce Court, to anything like the cost of the county court?—I do not know. I understand first of all the court fees are too high for the poor; therefore you should reduce them. The second thing is, it is stated that the people cannot come to London because of the time and of the expenses. I say in that class of case give to the divorce judge, if he is satisfied that is so, the power of going down and trying cases. It may be that will give too much work to the Divorce Court. That depends on whether there is going to be a large increase of business or not from it. Then the next step is that if it will prevent the judge carrying out the duties, then I say give power to the judge to send one of his registrars, who has been trained in divorce work, to go down and try that particular class of case. Under those heads I think you would get the costs down as low as they would be in the county courts.

4374. Your judgment is you will get more complete justice at the hands of the registrars than at the hands of the county court judges?—I do not want to put it in that way, because I quite agree the county court judges are very competent men and they would certainly be able to learn the business in perhaps a short time, if they had persons before them who knew about it; but what I understand would be the result is that you are going to throw at the county court judges a new business; I do not say it is a hard practice to learn, but there are a great many small things that you can only get into by practice, and you are going to start people with no one to inform them of it, and they have got to pick it up themselves. I say if you send a registrar of the court who has been brought up in the work you would gain the same ends as if you sent it to the county court, but you would have a person starting with knowing the business.

4375. But anyone has to have experience before they can get expert in matters of law?—Yes.

4376. And while that is being obtained I suppose some small errors may be committed?——

4376*a*. (*Mr. Spender.*) Would your objection to the county courts be met if there were some permanent automatic provision for revising the judgment of the county court? Supposing the present decree nisi were maintained, and in the six months it became the regular practice—not waiting for the intervention of the King's Proctor, but a regular practice—to revise these cases in the High Court in London through some judicial machinery?—I think the objection to that would be the great increase of costs.

4377. You mean the costs to the country or to the parties?—If you had six months to revise the case I suppose that would be to bring it before the High Court here.

4378. I am not suggesting a procedure in open court, but that the cases should be revised if it seemed to the judicial authorities here that there was a new precedent made in a dangerous case, and that they should then be able to reopen that case. I do not put it that many would be reopened, but it would afford a check?—I think, first of all, the parties would not be able to have two trials. If they find the county court judge decided against them, and they were advised it had to be revised, there would be a double expense.

4379. There might be a double expense if the King's Proctor intervened, or there is a possibility of a double expense?—Yes, but here you are going to give even the parties the right to revise.

4380. If the case were revised, but I am only putting it that it would be a check?—I do not think that would meet it. I do not see how it would be possible.

4381. Do you think it is possible to say, if there is a particular case in the country, that you could move a judge to the case without great expense and difficulty?—That depends on the number of cases that arise. If there is going to be a very large increase of business, I see that my view does not look as though it would work, but if the cases are only going to be a few, which I am rather inclined to think would be the result, then I think it would be possible to work it in the way I suggest.

4382. But you would not have the judge go to try one or two cases, would you—from the High Court?—If there was only one case to be tried. I think if it was a poor case, where the parties could not come to London, then I should.

4383. There was one point arising out of an answer you gave to Sir George White. I am not sure if I follow your meaning. I think you said adultery on a person's part, when the partner of the adultery was living in the house, would constitute cruelty?—Yes.

4384. And he asked if there would not be equal cruelty if the party were outside, and you said "Yes"?—If I did I did not hear the question.

4385. I was going to say that adultery might in that case be in any case *ipso facto* cruelty if the woman took it so?—Yes.

4386. But that is not your view?—That is not my view.

4387. (*Chairman.*) There are several points your evidence has suggested to me, and I should like to put them before you. At present the magistrates have no jurisdiction to grant separation orders on the ground of adultery?—That is so.

4388. Although there may be many cases where the petitioner or complainant might be able to prove that, but not cruelty. In that case the petitioners or complainants have to come to the High Court?—That is so.

4389. Do you think that is a satisfactory position. I mean the common class of people who utilise these separation orders can go to the magistrate for cruelty and desertion and aggravated assault and so on, but they cannot go on the ground of adultery; they have to come to the High Court. But assuming only a separation is granted, is it desirable they should have to come to the High Court in London?—Well I should say not.

4390. Would you give the magistrate jurisdiction in that case?—I am afraid we have given the magistrates power to grant separations, and, therefore, they should have power to grant separations on all grounds.

4391. That would increase their present powers?—It would. I think the separations are a mistake and should not be encouraged, but still ——

4392. That I understand, but still, existing, if separation is only obtainable it seems absurd they should have to go to magistrates for one class of case and the High Court for another when both might be dealt with in the country without difficulty?—I would give magistrates power to grant separations on all grounds for which you can have it in the High Court.

4393. Would it occur to you that that would be more satisfactorily decided by county court judges, who are trained lawyers, than county magistrates, who are not trained lawyers?—I do not mind the county court bench having the power to grant separations.

4394. Would it meet your objection to the higher remedy if the proceedings for divorce were carried through interlocutorily in the county courts, and then the High Court judge dealt with them except where he thought it was a proper case to remit to the county court?—I do not think it would.

4395. It would not meet your objection?—No. I take it that means that the county court judge would hear the evidence and ——.

4396. No, I meant where the interlocutory proceedings are merely carried through to get ready for trial in the local courts, the papers sent up to the High Court and the hearing in the High Court, unless the judge chose to remit and say "This is a simple case and it can go away?"—That would be one mode of dealing with it. It would not meet the whole of my objection, but it would part.

4397. Now going to another branch. You dealt very fully with this difficult question of insanity. We shall probably have some evidence about that, but to put it in anticipation, there may be cases in which insanity is hereditary and develops without any misconduct on the part of the unfortunate sufferer?—Yes.

4398. But there are cases in which vicious life produces insanity. There are some diseases that you know about which have that direct tendency?—Yes.

4399. Your view would be to grant divorce or nullity—whichever you called it—if the insanity supervened manifestly shortly after the marriage?—Yes.

4400. But supposing the same thing happened through misconduct after marriage, but quite shortly after—drunkenness or vice producing absolute insanity. Would you not extend your view to include that as a cause?—No; if the vice was the man's misconduct after the marriage then you already have the power.

4401. Well, we know—or we shall hear I expect—what drunkenness alone will do. That would be no ground for divorce at all?—No, but I suggest drunkenness would be an element of cruelty, and if the vice has been committed after the marriage, then you can get a divorce on the ground of cruelty and misconduct.

4402. But I was assuming a case in which it supervened two years after the marriage, when the person was sane at the time of the marriage, and there was no possibility of saying it existed at the date of the marriage?—Then I should not give divorce on the ground of that insanity.

4403. There is a case that may be probably proved—it is suggested in one of the proofs—of a woman who cut the throats of her four children and became an absolute raving lunatic, but no possibility of proving that it existed at the date of marriage. Would not that, in your view, be a case where divorce should be permitted?—I do not think so.

4404. Now this subject has led me to ask one question in consequence of a reported case, and in consequence, the same kind of cases coming, as I daresay you know, frequently, where a woman is *enceinte* at the time of the marriage, but not by the husband. You know that gives no ground for relief at all?—Yes.

4405. Neither separation nor divorce. Have you any view at present about that class of case?—No. I think the husband must, in nearly all those cases, have known the condition of the woman before he goes through the ceremony of marriage.

4406. The reported case in which the late president, Lord St. Helier, held that there was no knowledge of any kind?—No, my Lord, but in that particular case I appeared for the husband afterwards, and I got a divorce, if I remember the case correctly.

4407. These cases do occur. Would you have any view as to declaring such a marriage null, or granting a divorce?—I should not, because my view is that the husband ought to find out about such a matter as that before the marriage. I should rather doubt as in that particular case, where the child was born very soon after the marriage, whether he did not know.

4408. Assume he did not, would you leave matters as they stand in those cases?—I think so, my Lord.

4409. One other point on the question of adultery of a man. Your view is, in that case you illustrated by a man coming to London and committing an offence, and it being discovered after, that there should be no divorce?—No.

4410. Is that a ground for separation?—It is.

4411. The ecclesiastical courts always recognised the same position between man and wife?—Yes.

4412. Then if a wife could get a judicial separation on one incident like that, on what ground do you differentiate in a case where she applies for the divorce?—I think myself there is a difference, I will not say a great difference, but a difference between the conduct of a man and of a woman. Take any parents; if their sons committed one act, though they would blame it very severely they would think it a very different case if their daughter went and misconducted herself.

4413. I quite agree, in a sense, but if the wife at present for one act in the case you mentioned has the remedy of judicial separation, and is in that respect on exactly the same footing as the husband, and has always been in the ecclesiastical courts, on what principle do you base the view that she should not have the same remedy for divorce? She gets a complete separation, but not a dissolution of the tie?—I suppose it is that the contract should not be dissolved, as the adultery is not so bad with reference to the one as the other, and also in the interests of the children, that the marriage should not be dissolved.

4414. At present I do not quite see the difference which would lead to a justification of an order for judicial separation in such a case, and one that would not permit of a divorce. I am extremely anxious to get the views which show what is the difference between the tie being dissolved in such circumstances, and the relief of judicial separation. There is nothing left in the way of community of life?—But there is still the chance of the parties going back to live together, and there is not in divorce, and in the interests of the children it is better that there should not be a divorce. The parties are simply living separate, and there is a good chance of their going back and living together again; there is no chance of it in a divorce.

4415. My diffiulty is, if the wife has manifested her intention not to live with him by obtaining a judicial separation, the children are separated from him too?—As long as there is no divorce there is always the chance of the parties going back and living together again.

4416. Then on the question of desertion; in the interests of the children you think it is not desirable that should be a ground for divorce?—Yes.

4417. We have had statistics to show that in 40 or 50 per cent. of dissolved marriages there are no children. Take these cases that have been put, especially by Sir George White, of a woman left quite young, her husband having gone to America, but left with no children (and we may assume a considerable number of women are in that position, because the statistics show that there are no children in a large proportion of divorce cases), is that a case where you think the law should be left so that the woman should get no remedy but judicial separation?—Of course that question I have considered. I do not see how you can divide the divorce law into two parts, and say where there are no children you can grant divorce on different grounds to where there are children. I think the law must be dealt with as a whole with regard to that.

4418. You think in such a case as —— ?—There should be no divorce.

4419. Although the natural inference is, though you cannot prove it, from the fact of desertion in the case of a young man that he has established himself somewhere?—I think it would be very dangerous to start granting divorces where there was no proof. All you would have would be desertion.

4420. Then with regard to the judicial separation cases—the wife or husband (chiefly it is the wife, I

think)—may, if they have a conscientious objection, claim a judicial separation where they would be entitled, if they chose, to get a divorce?—That is so.

4421. Those cases are not infrequent?—No.

4422. Assuming the respondent has no conscientious objection, would you allow him or her, as the case might be, the right to demand that the decree of separation should be made a complete divorce?—No, I do not think it would be right to give the guilty party the right to have a divorce on their own guilt, notwithstanding that the wife had gone for a separation only.

(*Chairman.*) We are all very much obliged to you for your evidence, Mr. Barnard.

Mr. JOSEPH CHILD PRIESTLEY, K.C., called and examined.

4423. (*Chairman.*) I think you are one of His Majesty's Counsel?—Yes.

4424. And both in your junior and your leading day you have had a large experience in the Divorce Court?—Yes, almost altogether.

4425. I think you and Mr. Barnard have been dividing the honours?—Yes, I think I was admitted to the front row first, but he was there 10 years before me.

4426. I do not know to what extent it would be necessary to go into the differences between you and him, but I think I had better ask you your views quite independently?—If you please.

4427. With regard to local courts, what have you to say?—I personally am not in favour of sending this jurisdiction, which is of such enormous importance, to the county courts. I personally have not very much knowledge of the practice of the county courts, but, since this matter was mooted, I have made inquiries amongst friends who practice very largely in the county courts, and whose names would be known to several of the judges, and they informed me that in many cases they are very much overworked as it is, and one of the dangers I apprehend is that if these matters of small causes for divorce were sent down to the county courts, the judge might not have sufficient time to deal with them, and either might have their own work or this work deputed to deputy judges, and so we should not get that uniformity of practice which we have found in the past has been so important to the proper administration of these cases.

4428. There are two things: one is the question of time, which does not involve any question of principle?—No.

4429. That is only a question of providing sufficient time?—Yes.

4430. The question of uniformity is a different thing?—Yes.

4431. I do not know whether you heard what I put to Mr. Barnard about that?—Some of it I did.

4432. The suggestion one has to consider with regard to uniformity is this, that in all these cases the questions turn upon pure questions of fact?—Some of them, not all.

4433. What are the ones that do not?—Take desertion, for instance. That is, and always has been, highly technical. When once you have grasped it it is all right, but it is not entirely a question of fact. Your Lordship will remember the judgments on it.

4434. That would only amount to giving a clear definition of what desertion is?—Yes, but is the one that I find—especially in the court I sit in in the country (the magistrates' court)—is the greatest difficulty with them to understand; the essentials of desertion. That is one thing.

4435. That might be laid down clearly?—It might; more clearly than it is at present.

4436. And so might cruelty?—Yes.

4437. Supposing that is so, what are the difficulties you anticipate with regard to the uniformity of practice?—Well, the difficulties are these. There are a great many judges. We have known in our own court, with even two judges, that the judges take different views on facts, and it has been most difficult to apprehend exactly what to advise clients with regard to the different cases that come before the different judges. If we have 50 judges to try these cases I apprehend the practitioners who, I suggest, should always be consulted before these cases are brought into court, would have very great difficulty in advising with regard to the idiosyncracies and individual ideas of the judges.

4438. How do you provide for the idiosyncracies of the juries?—The juries, I take it, are the greatest protection any people who litigate in these important cases can have. If I may respectfully say so, the judges as a rule come from a totally different class to the litigants, and juries generally come from the same class in the majority of cases; and whereas some judges are extremely suspicious as to every accusation of adultery that is made against a woman, another judge may look at it from another point of view altogether, and my suggestion is—and my friends agree with me in the court—that both with regard to the adultery and cruelty the greatest protection the parties have is the jury.

4439. Is that because you think the juries come from the same class of people, and therefore know all about them?—Yes.

4440. Would not the fact that the county court judge lives and moves amongst his people put him in a position of being able to judge equally well?—I have thought of that, because I saw it was mentioned by Mr. Pickstone. I do not quite know what he meant. If he means the judge knows something of the parties, then I object, because he does not come to the cases with an open mind in that case.

4441. No, I think he meant he knew his country?—I do not quite know what he means by that, because if he suggests that the adultery and cruelty is to be tried on a different standard in Lancashire to what it is to be in London I disagree with him.

4442. But if you put the case before a jury it would be a jury of the county where it is tried?—Yes.

4443. And there seems to be more possibility of want of uniformity there. Then you suggest that is a good tribunal because they come from the same class of people?—Yes; but I understood the county court judge was to try it without a jury.

4444. I am not sure if I make my point plain. You think uniformity is desirable, that is to say, one or two judges are better than 50?—Yes.

4445. Then one asks one's self, why do counsel advise a jury. Your answer is because the jury is a protection, and knows more about the people, as it comes from their class. It would logically seem to follow, therefore, that the county court judge, who knows the class of people he has to deal with in his district, is more in touch with them than High Court judges are?—With regard to the trial of the facts, I prefer a jury. With regard to the practice, I prefer a judge who is always spending his time at it. I have no objection to the judge as a juryman, so to speak——

4446. But why do you prefer a jury?—Because of the great protection with regard to fact only—not on practice.

4447. I know; but I gather you meant because they come from the same class of people that they are dealing with, and that, therefore, their result was in accordance with the habits of those people?—No, not the habits, but with regard to the class of person. One has known in the past certain cases brought into court where one has felt the grossest injustice is done because of the different class of person trying the case.

4448. Does not that lead rather logically to this, that those who know the class of people will be the best judges of the fact?—Of fact, yes.

4449. Then does not a county court judge get a better opportunity of knowing the parties in his part of the world than the High Court judge in London?—I submit not, for this reason, because they go on circuit, and some of them have very large districts——

4450. The divorce judges?—No, the county court judges; and they know very little more of one part than of another, I should think, and the judges who are divorce judges have generally been men who have had very large experience when they were at the Bar as beginners, and later on, of all classes of life.

4451. Now, I think you have had meetings of the Bar about this question?—Yes.

4452. And you know pretty well the views they entertain?—Yes.

4453. The next point in your note is about the poor people not being able to defend because of the expenses and the difficulty of finding time. Would you tell us, exactly, what your views are, that you wish to convey about that?—They are these. I form the opinion chiefly from the number of cases where we have to—especially when I was a junior—account to the court for delay, and the answer always was: I had not got the means.

4454. Have you known cases of people waiting for years?—Oh, yes, many years, and in fact I have known cases in private life, when I was a junior, when friends have asked if one could make a suggestion, because of the expense—how it could be curtailed, and so forth.

4455. Has that led you to the practical view that poor people at present cannot bring their cases?—I think they generally do bring them, and manage to bring them either by saving up or by the assistance of their friend. But I recognise that is a hardship, because it involves long delay.

4456. What is the longest delay you have known?—I have known 20 years—one case before you, I think.

4457. Are lengthy periods quite common?—They are not generally as long as that. Five is about the average.

4458. Saving to get the money?—Yes.

4459. What is the suggestion that you and your colleagues, or those that you have consulted with at the Bar, would desire to make to meet the difficulty?—First of all, we want to reduce the fees in the registry, enormously. My friend and I have the same papers with regard to the fees, which I could hand to the Commission, if it was any use.

4460. That paper which Mr. Barnard referred to?—Yes.

Adjourned for a short time.

4461. (*Chairman.*) I think we nearly got through what you had to say about county courts. May I take it, generally, you are not in favour of extending jurisdiction to county courts, and yet you, at the same time, feel that poor people ought to have the opportunity of bringing and defending their cases?—Yes.

4462. And you gave the grounds, you said you thought the county courts might be overcrowded, and there might be difficulty about them. Then I think you summarise it thus: "We feel that, if power is to "be given to try matrimonial causes locally, they "should be tried by the judges of the Divorce Court "or by special commissioners appointed from the Bar, "as having special knowledge of the practice," and so on. That is a view you really desire to maintain?—That is so.

4463. The difficulties of arranging that would be matters that would have to be considered by those who had to appoint and those who had to pay the fees?—Yes, and to work out the matter in practice.

4464. I do not think it is much use going in detail through all that. I should like to ask you one other point about the power to assess damages?—Yes.

4465. If they were given locally I see you suggest a limit?—I do.

4466. But I should like to ask you something further. Would you think it desirable that a claim for damages should be maintained at all, or if I might put a suggestion that has been made to us, that the judge hearing the case, should have power to order the co-respondent to make some provision, either for the children or the wife, as the case might be, at his discretion?—Yes, I should, for this reason. I should very much like to see the petitioner indemnified by the co-respondent for the costs he has been put to, both where he has to pay his own and his wife's. At present, where he has damages, the bill is taxed against the co-respondent in such a way that the petitioner very often is out of pocket by the whole transaction, and we come to the judge and ask that the damages should be awarded first in payment of the extra costs incurred by the petitioner and the rest settled upon the wife and children.

4467. That is where damages are assessed?—Yes.

4468. Might it not be more advantageous to leave the judge power to order the co-respondent, having regard to the circumstances, to pay such extra costs and to make such provision as he thought fit?—Yes, I think so, for this reason, because, at present, the damages are assessed upon the loss the petitioner has sustained. But in practice the petitioner does not get those damages. They go to the wife and children, so there is an anomaly at once.

4469. They go at the judge's discretion?—Yes, to the wife and children.

4470. Then the next point you deal with is the means of simplifying procedure by allowing affidavits to be laid before the local registrar, and papers sent by post. This is assuming there is not a local tribunal?—Yes, and the registrar to deal with interlocutory matters.

4471. Then would you see any objection, apart from the question of trial, to interlocutory proceedings being dealt with in the district?—Not at all if we could get a certain amount of uniformity, which is covered by the suggestion, I think that they should be sent up to the registrar in London.

4472. To be looked through?—To be looked through.

4473. How would you deal with the particulars then, in the way you suggest? By commissioners or judges?—Yes, if you please.

4474. Then the fees you think are too high?—Oh, yes—in the registry.

4475. That you have put in that paper?—I handed the paper to Mr. Brierley.

4476. Then we may see that after?—Yes.

4477. To give a scale on what you think things might be done?—Not a scale on what they might be done, but the scale of how they are done now. But there is that glaring one that Mr. Barnard referred to—3*l.* for setting down.

4478. That is to the registry?—Yes.

4479. Then there is the question of the King's Proctor?—Yes.

4480. Do you anticipate that if there were more places where cases were heard there might be more difficulties in that way?—If the law remains as it is at present. I am very much afraid that the King's Proctor's office might degenerate if it was put into hands less competent.

4481. But need that be so? Might not the matter be left to be dealt with by the King's Proctor as at present, he intervening in London and making his inquiries as he does now?—I am quite of that opinion, yes, but if there were any local King's Proctors, or people in his position, I should strongly ——

4482. Would it be necessary to have local King's Proctors?—I do not think so. If information were sent to him I should suggest, without his going to the Attorney General, he might issue his fiat himself.

4483. It is suggested an interval of three months might elapse between filing the petition in the local courts and the hearing?—Yes.

4484. That is, to give the parties time to reflect?—To cool down.

4485. As to the question of separation orders, will you state shortly your own views upon those, according to your experience? You see, we have the report which is referred to, so you need not trouble with regard to it?—No.

4486. But what we really want is rather the result of experience. You are a magistrate yourself?—Yes. I have a certain amount of experience down in my own county.

4487. Then tell us the result of your own experience with regard to these orders?—I think, in the first place, those cases that come before the magistrate are very well tried out in the majority of cases—especially in a tribunal like the one I sit upon in Hertfordshire.

4488. They must appreciate your experience there?—I do not know, but they take infinite pains to get to the bottom of it. They have a most competent clerk of justices, who is also local registrar of the county court.

4489. We think we know what the position on that is, but we should like to know what your view is about a permanent order of separation in the first place?—I think that is very much to be deprecated.

4490. Why?—Because a woman rushes to get an order at the first chance she has, and she may bitterly regret it. The man is separated, and very often sets up another home for himself, and he does not pay the money ordered, and a great number of men come up time after time—are brought up by the wife to pay, and he fails and shows want of means. It puts him out of heart, and he never takes any trouble to get it.

4491. What would be your suggestion?—The suggestion is the one I make here, that in cases of cruelty, where the wife requires protection, let there be an order for a time only—say, six months. If at the end of that time she requires to renew it, let her renew it, either by restoration of the old summons or by a new summons; and, if not, let it lapse.

4492. Then in cases of maintenance and desertion?—In cases of maintenance and desertion I should abolish any such provision that the wife be no longer bound to live with her husband.

4493. You see no necessity for it?—None at all. I certainly think she ought to have an order for maintenance.

4494. Let me ask you to assume, though you do not think it is right, that the county courts have jurisdiction in divorce cases? Would you suggest that the temporary order should be made by the magistrate and any subsequent order made by the county court?—I do not see any necessity for that. I think that is throwing on them work which the justices who had the case originally are quite competent to deal with.

4495. Unless the party deserted divorces?—Yes.

4496. You think the justices also are better able than the county court judges to deal with drunkenness questions?—I think so, for the reasons I state there, that they are better qualified to say whether the man is a habitual drunkard, because they probably have had him on assault and drunken cases before, and they would know without any abundance of evidence that that is so.

4497. Now to turn to another branch. Will you say what your view is about publication of reports in divorce and matrimonial causes—and more especially the grounds of your view?—I agree it is a most difficult question; there are very strong views held on both sides. On the whole, I think that at present my view is that publication does more good than harm, because it deters people very largely from immorality if they know that their immoral conduct will be brought before the world, and the case tried and published abroad.

4498. That is the good. Now what is the harm in your mind?—The harm is this, that if the case is tried in open court and there is no report of it, all sorts of stories will get about as to what the nature of the evidence was, and it will do perhaps an innocent person wrongly charged an immense amount of harm, and it is only fair that in country districts, or in towns, where people have discussed these cases before they have gone into court, people should know exactly what was proved or disproved in the case against the parties.

4499. Now take the other side of it. You said there were opinions on both sides?—Yes.

4500. Have you considered whether any harm results from publicity?—I have not had any experience of any harm, but I can quite see that in certain cases people taking up newspapers of a questionable character will find things which they ought not to read and ought not to be allowed to see.

4501. You refer more to the young?—Yes; but in most homes surely that is guarded against.

4502. Does your experience enable you to give us any view as to whether witnesses or parties are deterred by the fear of publicity from giving evidence?—I have known one or two cases of parties being deterred. One case particularly I remember that was tried before you, I think, where the respondent—the wife—fled because she was afraid of the publicity, and she could not get up the moral courage to face the court, but in spite of that I believe her case ended in her favour, because the co-respondent denied it, and appeared and defended, and he was aquitted.

4503. Was that a case in which the co-respondent came from America?—Yes.

4504. He came and fought and she fled?—Yes.

4505. They were both found innocent?—Yes. I was in the first part of the case, but not that part. I was in the case on the question of jurisdiction. It was said he was an American.

4506. That is a party?—Yes.

4507. Have you known of any case of that kind where it has happened to witnesses?—Very rare. I have heard it said that so and so will not come because they will not be mixed up with a divorce case; but I agree with my friend that when a subpœna is served it has an extraordinary effect on producing a witness.

4508. A subpœna?—Yes.

4509. Do you think it is a willing witness then?—I think it produces the truth.

4510. I think that covers the ground which you wish to put before us?—On that, except this, that if all these matters were to be suppressed, I suggest it should be tried *in camera*, because of the harm that will be done by garbled versions of the story.

4511. That is the suggestion of many of the foreign codes?—Yes. Of course, in France they are absolutely suppressed, and a heavy fine is imposed if it is disobeyed. In Victoria and Queensland there is a discretion.

4512. We had those codes, but your view is that if there is no publicity then cases should be heard *in camera*?—Yes, out of justice to the parties.

4513. Then the question of amendment of the law as it at present stands. Will you give us your views about that, and more particularly the grounds of your views?—The first point I mention is insanity. I think, as leader of the court, I ought to say my friends are not all in agreement on these points, but I am going to give my own views of them. With regard to insanity, first of all, I would go further than my friend Mr. Barnard; he was suggesting that the law ought to be strained back somewhat in the way of admitting insanity which supervenes soon after the marriage as strong evidence of insanity existing at the time of the marriage, and so doing away with consent. I would go further than that and ask that the law should be amended by introducing insanity arising at any time during the marriage as a ground of divorce.

4514. Would you apply that where the parties have been long married?—I would even there, because of the terrible injury inflicted upon the other party of the marriage. You see it is only voluntary on the part of the applicant after all; it is not as if it is being forced upon them. That would bring our law into conformity with Germany, which has a definition, if I might give it without wearying you, "Insanity which having continued "for more than three years during the marriage and "being of a kind so severe that the intellectual com-"munity between the spouses has ceased, and there is "no hope of its re-establishment."

4515. Would you apply that only in cases where the respondent was confined in an asylum, or where he was insane but properly looked after without being so confined?—I would not confine it to an asylum, because I think that would be an inducement to people to put away a spouse whom he had been living happily with up to that time.

4516. Then passing to the next matter?—Penal servitude?

4517. Yes?—I should suggest the law should be altered. I have put down ten years, but perhaps that is too long. Austria has five; New Zealand seven; and Victoria and New South Wales also have it.

4518. But would you let me get this, because it is the ground we want for your suggestion? What is the basis on which you formulate that view?—On this, that one of the grossest injustices done to a wife—we will take her case first—is that of her husband having committed some outrage which has required his detention for a long period of penal servitude. The woman

is denied a husband altogether during the period, and if he comes out it cannot be for the good of the children or of her that they should be associated with him longer. That is my view.

4519. I ought perhaps to have asked you this question as to insanity. Have you considered it in relation to children who might be possible if there was no dissolution of the marriage?—I have. I think it is a thought that must strike everyone—the consequences of re-establishment of sexual relations when children might be introduced into the world who have the taint of insanity upon them.

4520. Have you known yourself any case of that character?—Not of permanent insanity, no, but of other insanity—intermittent, yes. But I have not considered the case.

4521. I rather gather you would not extend the right of divorce to cases except where they were supposed to be incurable?—No, it had not occurred to me to do so.

4522. There is in one respect a considerable danger in intermittent insanity—of hereditary succession?—Yes, which is dreadful to contemplate.

4523. That is more a question for medical evidence?—Yes.

4524. The only thing is, you are so connected with the medical world?—Yes. I know of marriages that have been stopped because of the hereditary taint in one of the parties.

4525. Then the next point you make is about desertion?—Yes, I am strongly in favour of desertion being a ground for divorce *a vinculo*.

4526. Before you proceed; to what extent have you found in your practice that men and women are deserted by a spouse proceeding off to a foreign country or the colonies?—Oh! a great many cases.

4527. A common thing?—A common thing.

4528. At present the party left behind must wait till they can prove adultery?—Yes, in the case of the man ——

4529. Is there anything in your experience to lead you to say that there are cases in which they cannot trace them?—Not in the cases coming before me, because the cases would not have been brought if they could not trace them.

4530. Well, you think there is enough ground for divorce if they are not traced, and there is desertion?—I have known many cases in which they have come to know what their rights to relief were because they could not trace them.

4531. Then your view is to allow that as ground for divorce independent of the commission of the act of misconduct?—Yes, that would be so.

4532. With regard to time?—Well, I always thought that the Scotch period of four years was one that commended itself to me.

4533. It is suggested that, if that were allowed, it might open the door to further collusion. What do you say to that?—I do not think so, because the man does not go away knowing that he may have an order made against him for maintenance and will be deprived of his children merely in order to collude.

4534. Do you think those cases of desertion of which we are speaking are cases in which the respondent is acting adversely to the petitioner?—Chiefly for his own interest.

4535. Not with her sanction?—Not with her sanction. Generally very much against her wish.

4536. You say yourself in your note, the members of the Bar practising chiefly in the Divorce Court are not unanimous on this point?—Yes.

4537. But some are in favour of it, and some are not, I suppose, that means?—Yes.

4538. And you are strongly in favour of it?—Very strongly.

4539. Do you consider from the experience you have had that the fact of not being able to get a decree of divorce on the ground of desertion leads or does not lead to immorality?—I think it does.

4540. Will you tell us how you think that operates?—Because if the man has been guilty of adultery and the wife has a judicial separation against him for that, he is himself thrown back on associating with the woman with whom he has committed adultery. That is one case. In the case of desertion, if he is deserted he forms another home. He requires somebody to look after him, and he cannot get relief except a judicial separation. My Lord, I can remind your Lordship of a case that happened where the wife went away to Dakota—your Lordship had to deal with it—the wife went away with the co-respondent to Dakota. The husband misconducted himself, and although he got relief in that case, it was held he ought not to have got relief.

4541. Was that on intervention?—No, it was in the Court of Appeal on settlements.

4542. Oh, yes; that is a well-known case?—Yes. The husband was a devoted husband, and never would have gone away if he had not been deserted, and he misconducted himself during the desertion. If the law had been followed, as the majority of judges thought it ought to have been, he would not have got any relief at all.

4543. Just to identify that case; it was a case before Sir Francis Jeune originally?—Yes.

4544. And taken to the Court of Appeal?—Yes, on settlements.

4545. Now, I do not think I need trouble you to detail the next point you referred to. Mr. Barnard referred to that question about nullity of marriage between an English woman and a foreigner?—Yes.

4546. Do you agree with him?—Yes, Ogden *v.* Ogden. May I say what I did not mention here on this part of the case—cruelty alone. It has never occurred to me to suggest that slight acts of cruelty should constitute a ground for divorce, but there is a certain class of cruelty which strikes me as eminently justifying a divorce.

4547. Alone?—Alone. For instance when a man has communicated a disease to his wife, in the very early days of the marriage, which he contracted before the marriage. I have had cruelty cases of that kind—one with my friend Mr. Isaacs, which he would remember if he were here. In that case we were compelled to search for some evidence to show the husband might have misconducted himself on the honeymoon. The judge accepted the suggestion and she got relief. It was a very bad case.

4548. Let me see if I have got what you are conveying. Do you mean the case of adulterous intercourse?—Not adulterous intercourse.

4549. Well, intercourse with some woman before marriage?—Yes.

4550. And a disease then contracted?—Yes.

4551. And communicated after marriage?—Yes.

4552. That would at present be a ground for a judicial separation?—Yes.

4553. On the ground of cruelty after marriage?—Yes.

4554. But no ground for other relief, because there was no adultery after marriage?—Yes.

4555. That is a class of case you would extend the relief of complete divorce to?—Yes.

4556. Would you go further in any other cases? Let me put what we shall have to face some time or other; cruelty which renders life practically impossible?—Oh, yes, certainly I do, and there is ample warrant for it in other countries, although not in this—ample.

4557. That leads me to ask you the result of your experience, or rather the view you have formed from your own experience, as to the present difference between men and women with regard to adultery?—I am strongly in favour of the equality of the sexes.

4558. Have you anything to say about the husband not being divorced for one act?—No, I have not. I think the wife, if she desires to avail herself of the remedy, should be entitled to take it just as the man can. I put it in this way. Should an innocent wife be tied to a guilty man in such circumstances, because if she had been guilty she might have foisted another man's child on the husband?

4559. You are in favour of absolute equality?—Yes.

4560. Then the next is drunkenness?—Yes.

4561. What do you say about that?—I say that should be made a matrimonial offence as much as cruelty, if it is habitual drunkenness.

4562. It is a matrimonial offence under the Magistrates' Act?—Yes.

4563. You mean more than that?—Yes; that it should be equivalent to cruelty if the law remains as it is.

4564. Is your view that where a judicial separation can be obtained, divorce should be?—Practically, it is.

4565. Then I should like to ask you upon that, if a suit is for judicial separation on grounds such as to justify divorce, if claimed, would you allow the respondent to demand that it be made a divorce if the petitioner only wished to get a judicial separation?—No, I do not think so, and my reason is this. I have known cases, like my friend referred to this morning, where the wife from religious and conscientious motives only desires a judicial separation. They have come to me and told me so. When it has been pointed out to them that they are not bound to marry again, that they may be putting the man they have lived with all these years in an invidious position, and unable to regularise his misconduct, they generally relent.

4566. And make the complete claim?—Yes.

4567. Do you think it right to leave that to the option of the claimant?—I do. I do not see why a man should be at liberty to dissolve the marriage at his own sweet will after misconducting himself.

4568. The only reason that occurs to one is that if one is to try and diminish immorality, one does not see how that is effected necessarily by separating people without a complete divorce?—I quite agree; but I still retain some of the old ideas of the old Ecclesiastical Court on that point. On the whole I am in favour of them rather than the absolute avoidance of recrimination.

4569. Well, on recrimination; what decision have you been led to arrive at?—I have looked into the point from the Scotch point of view and other countries' points of view, and I still feel that recrimination is only just; because if a man goes into court and says: "My wife has misconducted herself," and succeeds in establishing that, then I think the wife should have the right to say: "You did the same; and also you first "loosened my moral sense with regard to it."

4570. You would leave them where they were?—In that way, I should.

4571. That is what leads me to ask you, is that an advantage to either them or the country?—I cannot say that it is.

4572. Does it tend to induce morality?—But it is rather forcing the other extreme, forcing them to dissolving marriage, which I feel the State should do its best to preserve, except for certain specified grounds.

4573. Quite true, but when the marriage has been in fact, as a practical tie, put an end to in such a case as that, do you consider it would still be an advantage to leave it as a legal tie?—Oh, I think so. It has worked fairly well up to now in those cases where a judicial separation has been asked for, because of conscientious scruples. The wife has the children, and she makes up her mind that she will retain it.

4574. Mr. Barnard told us that he thought the law should be interpreted by the judges in such a way as to give them a wider discretion?—Yes.

4575. Have you anything to say as to that?—I cannot think why it is, except that the judges who first introduced these interpretations of the discretion granted by the Act were so imbued with the old ecclesiastical ideas as to divorce *a mensa et toro*, where recrimination was an absolute bar, if established, and I think they went further than it was intended they should do.

4576. Would you leave the judge a wider discretion to dissolve the tie?—I would seek to abrogate the cases that tie their hands.

4577. Then you would leave it to their discretion?—Yes.

4578. They may have exercised it hitherto in such a way as to prevent that being done?—Yes.

(*Sir Lewis Dibdin.*) That is the same view as Mr. Barnard took.

(*Chairman.*) Yes.

4579. And you think a woman who is not a party to a suit, if charged with adultery, should have notice?—Yes.

4580. So that she could come in if she liked?—Yes.

4581. And you also, I think, agree with him that there should be wider powers to the court as to provision for husband and wife?—Yes, and if I might suggest it, that statute of 1907 gives a wife the power to come to the court if the means of the husband are increased; so the court should have power to diminish the amount payable to the wife in certain cases, such as where the wife acquires a very large fortune. It would not be just then if the husband were deprived of his means by any adverse business losses ——

4582. I thought that Act gives power to lessen the amount?—No, only the amount payable, but there is an amount secured also. The order may be twofold, and he may have parted with the bulk of his capital.

4583. You mean the security might be reduced also?—Yes, that is so. Then with regard to provision for the children. My Lord, the objection to that, which was pointed out to me by my friends in the court, was this: We are practically making a will for the man. If he is ordered to secure for the children of the marriage in the case of divorce, and for the wife in a case of judicial separation, we are making a will for him, and although there was that objection taken, my own view is that the court should have power to do so, and for this reason. Where there is a judicial separation—if there is to be one in future—the husband cuts himself off by his own act, and has shown that he does not mean to live with the family, which is given to the wife's custody as a rule, and he may exercise pressure upon them to leave the wife and go to him by reason of his having a superior fund at his disposal; and it seems to me that the court should have power to prevent such an injustice as that to the wife.

4584. Then, I think, you also suggest the court should have power to revise original orders and deeds and instruments executed under them?—Yes.

4585. At present, where a settlement is varied, there is no power to touch it again?—That is so.

4586. Might not that lead to difficulty if applications are made long afterwards?—Not on change of circumstances, my Lord.

4587. I think that deals with all you have mentioned in your proof. There are one or two points in addition which have occurred in the course of the examination of Mr. Barnard. One is that case which I put to him of pregnancy discovered existing at the time of a marriage?—Yes.

4588. I think you have had some experience in cases of that kind?—Yes. Well, I remember a very well-known case of Moss *v.* Moss, which was the most glaring of the kind that ever came before the court. That is reported in 1897 Probate, page 263. There the husband was found to be quite innocent of any knowledge that his wife was pregnant at the time he married her; but she gave birth to a child by another man within a month of the marriage, and he went to the court for a decree of nullity on the ground of fraud. He was unsuccessful in the then state of the law and the present state of the law. Nobody, I think, has ever questioned Sir Francis Jeune's law; but it was a shocking state of affairs, and there is no remedy at present in this country.

4589. Would your remedy be a power to decree nullity?—Certainly, and I find that prevails in France, and in Prussia and in Austria also, and in Austria the law is that the woman must be actually pregnant at the date of the marriage, that she must be pregnant by a man other than her husband, and it must be unknown to her husband at the time of the marriage—those three conditions.

4590. That would seem to show they have those cases there. Have you met more than that one case?—Personally, not; but I know there are other cases, because men have told me about them.

4591. I see you have studied the codes abroad a good deal?—Well, when I heard I had to give evidence I thought it as well to look up a few things.

4592. Your point is that that particular class of case should be annulled?—Yes.

4593. Have you looked to see what are the grounds of annulment in Austria or other countries?—Well, they seem to be in Austria by statute, I gather, and it seems to be on the ground of fraud because the word "concealed" is mentioned.

4594. But have you got any reference that will enable us to look at it? For instance, say, in Rome—the grounds of annulment that are acted on there?—Oh, I have a number of Roman Catholic grounds of annulment.

4595. Where do you take that from?—From Geary, who collected them with great assiduity from all the books he could get hold of.

4596. What is the reference to it?—Geary on Marriage.

4597. Can you give a reference?—Yes, and an extract, too.

4598. An extract you took yourself?—Yes, I took a copy of it. First of all as to concealed pregnancy. Your Lordship will find a good deal about that in Frazer on Husband and Wife, page 463.

4599. That is the Scotch book?—Yes, but I cannot find it prevails in Scotland.

4600. Perhaps Lord Salvesen will tell us about that?—Yes. Well, there are 14 grounds of nullity. First, "Mistake in person." That is not quality but person. (2) When consent to marriage is obtained under a false condition, such marriage may be declared void. (3) A solemn vow of chastity on entering a religious order annuls any subsequent marriage, but a simple vow of chastity does not. The Pope can dispense with either. (4) Consanguinity up to fourth degree. Spiritual relationship also nullifies marriage, such as Godparents. (5) Crimen. Adultery or homicide of a spouse, committed by conspiracy against a former spouse, prevents any valid marriage between the criminals. (6) Mixed marriages. A marriage between a person baptised and an unbeliever unbaptised is void. (7) Consent and force. Marriage brought about by duress is null and void. (8) Orders, validity assumed, annul any subsequent marriage. (9) A previous tie, either of marriage or sponsalia, creates an impediment. Must be a clear promise and re-promise. (10) Public honesty. This arises from previous marriage or sponsalia with a relation of either party—and the instance of Henry VIII. and Catharine of Arragon is given for that. (11) Affinity. The tie between persons whose relations have had sexual intercourse, even without marriage. (12) Impotence. (13) Form by decree of the Council of Trent. (14) Abduction—*raptus*. (15) Besides the above the Pope has power, and is wont of his discretion for good reasons shown, to dispense the parties from and dissolve a marriage which, though valid, has never been consummated.

4601. Will you give us a reference to the page in Geary, where we can see that?—I have not abstracted the page, but I can give you the quotation, and send you the reference.

4602. (*Sir Lewis Dibdin.*) I did not recognise your reference to the Council of Trent?—"Form by decree of the Council of Trent." I do not quite know what it refers to at this moment; I cannot remember.

4603. (*The Archbishop of York.*) Is there any European country where all these grounds which involve nullity are part of the statute law of the country?—No.

4604. That is the ——?—The law of the Roman Church.

4605. (*Chairman.*) Might I say I was informed that in Austria they are even more extensive; but that is a matter we must verify?—I can tell your Lordship something about that, because I have abstracted that from the code, and it is interesting.

4606. From the Austrian code?—Yes; in Austria, the tie of a valid marriage contracted between public persons can only be dissolved by the death of one of the spouses. The tie of marriage is equally indissoluble when even only one of the parties professed "the Catholic religion at the time the marriage was "concluded. Section 115. The law permits those "who do not profess the Catholic religion to demand, "for important reasons, the dissolution of the marriage "according to their conception of religion. Such "reasons are when one of the spouses has been "guilty of adultery, or a crime which has produced a "sentence of at least five years' imprisonment. When "one of the spouses has wickedly deserted the other, "and in case his or her residence is unknown, he or "she has not appeared in consequence of a public "judicial summons within a year; attempts dangerous "to life and health; repeated severe ill-treatment, or "disinclination not to be surmounted, on account of "which both the spouses apply for the dissolution of the "marriage; still, in the latter case, the dissolution of "the marriage is not to be granted immediately, but first "of all a separation *a mensa et toro* is to be tried, "and, according to circumstances, even on repeated "occasions." Then "The law permits non-Catholic "spouses to apply for the dissolution for the reasons "mentioned, although the other party has joined the "Catholic religion."

4607. That is not what I am upon. We have got the Austrian law about divorce, and what you are latterly reading is divorce between non-Catholics?——Yes.

4608. Have you got the grounds of annulment amongst Catholics in Austria?—No, except that what I have read to you would be good law in Austria—the grounds between Austrian subjects who are both Roman Catholics.

4609. The old grounds?—Yes, the old grounds of the Roman Church.

4610. Can you tell us whether that appears in the book you have referred to as applicable to Austria?—No, but I have no doubt that is so.

4611. (*The Archbishop of York.*) It is recognised as part of the common law of Austria?—I take it to be so because there is no divorce permitted in Austria by reason of the Church; but there is nullity.

4612. On the grounds you already have read out?—Yes.

(*Chairman.*) Well, that is the end of your proof. We are very much obliged to you.

4613. (*Mr. Spender.*) May I ask you about custody and maintenance? You say those are too important matters to hand over to the county courts?—Well, I think that with regard to the question as to the custody of the children; and if I thought they could be dealt with by the county court judges one of my objections would be removed.

4614. They are habitually dealt with by police magistrates in reference to separation orders?—Yes, but that is only maintenance in cases of desertion or cruelty.

4615. (*Chairman.*) No, there is a special section of that Act of 1895 which gives the magistrates power to make orders for custody of the children?—Yes, custody of the children and maintenance up to 2*l.* a week.

4616. (*Mr. Spender.*) Do you think, in the case of divorce, those questions are more difficult than in separation order cases?—It depends on what jurisdiction you would confer upon the county court—what class of people. If it is only going to be the very poorer classes, that objection goes.

4617. That is really what I want to get at, because the proposals before us have been to confine those cases to the poorer classes?—Yes; I have no objection then.

4618. Then you make a suggestion as to a possible alternative tribunal. You say special commissioners. You assume in that that the commissioners should travel—have a kind of circuit?—Yes, I do; that just as now a judge of assize has gentlemen associated with him in the commission, which, in case of his illness or inability to attend, he can confer power upon them, so here judges in London might have commissioners coupled with them to take the work in case they were unable to go. That is my suggestion.

4619. I see you do not offer any evidence with regard to the reporting of divorce cases?—Yes, I have said something about that.

(*Chairman.*) Yes, that was dealt with while you were not here.

4620. (*The Archbishop of York.*) I am sorry I did not have the privilege of hearing most of your evidence,

Mr. Priestley, but from what I have heard I should like to ask this. With regard to the amendment of the present law of divorce, I notice you do not suggest that drunkenness—even habitual drunkenness—should be ground of divorce, but only evidence of cruelty?—I have made a suggestion in regard to cruelty being a ground of divorce. I do not know whether you heard it.

4621. Yes?—But if drunkenness were taken as an excessive kind of cruelty, and was exceedingly bad, I should have no reason to withhold a divorce from a woman in such a case as that.

4622. Would you extend that to the husband of a drunken wife?—Yes, if it is very bad—not in a trivial case; nothing of that kind.

4623. Then the degree would have to be left entirely to the discretion of the judge?—I think so. If a husband or wife asked for it, they would have to make out a very bad case.

4624. Would not it create a considerable unsettlement of married life if people knew they could obtain a divorce if only a certain degree of drunkenness could be proved?—I do not think it would. The home would be so unsettled by that time that any indication of the wife or husband seeking for relief to the full extent would not unsettle it more. It would bring it to a crisis, and if a judge did not think it sufficient, then it would be a warning to the offender to mend his ways.

4625. Supposing jurisdiction in divorce were extended to a very large number of judges, would not that be one of the matters in which there might arise a very considerable variety of decision?—I quite agree it would. That is one reason why I am in favour of not conferring jurisdiction on the county court judges.

4626. Then supposing that not only were there a large number of judges, but that there were all sorts of varying degrees of drunkenness, which might, or might not, entitle to divorce. Would not these two things together be a great unsettling of family life?—Might I define it in this way: That if it makes the domestic life absolutely impossible. That is the only ground on which I would dream of granting it. I have no desire to loosen it, but it is only if the position is absolutely intolerable.

4627. At the moment?—Oh, and for some time past, just as in cases of cruelty. One act of cruelty, unless it is so excessive that the life of the sufferer is seen to be in danger, and that she ought never to have to undergo such a thing as that again, is not a ground for judicial separation. It must be cumulative.

4628. May I put it this way. As you contemplate the possibility of so very largely increasing the grounds of divorce, and as these grounds of divorce in each case will be obviously matters of degree, it is very difficult to contemplate extension of jurisdiction over a large number of courts?—I think so. I think it ought to be confined to as few as possible, so as to try and get at some sort of uniformity such as we have now. We can advise a client now, but we could not if we had 50 judges with 50 different views.

4629. Different views upon these suggested questions of extension?—Yes.

4630. (*Mrs. Tennant.*) I am interested in your view about penal servitude. You do not feel at all that it is taking rather a hopeless view of the prison system to think that a man or woman may have received no benefit from the time in gaol?—Oh, I do not think so. I do not think I can contemplate anything very much more awful than for one of the spouses to find the other has been guilty of such a crime that it involves five years' penal servitude, and I think she ought to be the person to be consulted and considered in the matter—or he, as the case might be, rather than the other party.

4631. Do you not feel it is possible that a man or a woman might have committed a bad crime in circumstances of great temptation, and might have been altered by the time in prison?—Well, I do not think under those circumstances that the judge would give five years' penal servitude.

4632. But would you put any limit upon the time within which a man or a woman might apply for a divorce? We will say within the first year perhaps. The prisoner might not have been amenable to the influence that has been brought to bear upon him in prison the first year, but in two or three years he might; and would not it be rather fearful that he should find he had lost his wife when he came out, or that a woman had lost her husband?—I quite feel it would be an affliction to him perhaps, but I think he ought to have thought of that before. I am thinking more of the innocent party's interest in the matter than of his, and that outweighs all consideration for the guilty party. The innocent party ought to have the opportunity of starting a fresh home after such a shock as that.

4633. I suppose, too, you are trusting to the fact that everybody would not take advantage of it?—Oh, certainly.

4634. And that imprisonment might be a thing that would stimulate the faithfulness of the husband or the wife?—Certainly, and I say that with regard to these other offences too. It is not every wife who has a right to divorce who comes and asks for it.

4635. I wanted to ask you on that point whether it had not come within your experience that a wife applying for a divorce had forgiven her husband before, even though she has the aggravation of cruelty or desertion?—Oh, yes, there are many cases of condoned adultery.

4636. You yourself do not feel anxious that, giving the wife a discretionary power, would necessarily mean a great increase in the number of suits?—No, I think those cases where they have asked for judicial separation have been chiefly cases where they could not get a divorce.

4637. (*The Earl of Derby.*) Because of their own fault?—No, the other side's fault, and many deeds are entered into, and a certain amount of pressure is brought to bear on the parties themselves in a judicial separation suit: "What is the good of fighting out "this matter, if you can have the same relief by a "deed of separation?"

4638. (*Mrs. Tennant.*) Then I want to ask you a question on a matter you gave some emphasis to: the difficulty counsel would have in giving advice if confronted with the great diversity of standards there must be in county courts?—Yes.

4639. If the county court cases were limited to cases where the income was very small, is it not probable that the party in the suit would employ local counsel or local help?—Oh, yes, it is quite possible.

4640. Then in that case there would not be that difficulty. I mean a lawyer in Manchester would consider only the attitude of mind with regard to facts of the county court judge in Manchester?—Yes.

4641. He would not have to advise one client who would be appealing in Manchester, and another who might be appealing in Edmonton?—Oh, I quite agree, but there is something in this: that counsel or solicitors who have had a great deal of experience in these matters, often bring the parties together again without rushing into court at all, because they exercise such influence as they have to put an end to the disagreement, and we have found in many cases that the judges call counsel together, and it is chiefly because they know the counsel, and know their views, and have seen a great deal of them, that they say: "Now, cannot this "matter be dealt with without going through it and "fighting in open court?" Well, I foresee a certain amount of difficulty in that with a very busy county court judge.

4642. It has been put to us that the county court judge knowing the circumstances, and knowing the district, would be more able to effect reconciliation than the High Court judge?—I do not see that.

4643. We have not had it put before us yet that the counsel themselves—I think it is the first time we have been told that—try to reconcile the parties?—Well, what they do is this. They see their client with the solicitor and they tell them the whole of the case, and the chances they have, and that they had better go and think it over if they have not a clear case, or a case where there is a reasonable chance of success. I

am not sure that I agree with the judge in the district knowing better than the High Court judge.

4644. Well, they might have more time possibly in some cases to take the people aside. I think one or two county court judges have said that did happen with regard to other cases. Sometimes they are consulted with regard to the expenditure of money obtained in workmen's compensation cases, and they do come into rather friendly contact with the suitors?—Well, if they have time, well and good. If not, the case will have to be gone through, because a case can be gone through more rapidly than by settling sometimes. The other day I had a case that took an hour and a half. It came to an end because the judge sent for us, and the parties became reconciled. I do not know, but I am told there is so little time, and how would that be likely if it takes as long as that to bring the parties to a reasonable state of mind.

4645. I suppose all questions of time are a matter of adjustment?—Yes.

4646. They might be met by increasing the facilities in the county court?—Yes.

4647. But would not anything that pressed hardly on the county court judge press still more hardly on the High Court judge, or on the Commissioners working under them?—I think not, because they have nothing else to do.

4648. But the present High Court judges are fairly well occupied?—Well, take a case like a special jury. We have had two cases in the special jury list recently. We had one the other day—on Tuesday and Wednesday last. It was part heard on the Wednesday morning, and the judge sent for us in the morning. No other case was in the paper because it was anticipated that case would last four days, and it came to an end that day. The judge sent for us, and it took an hour and a half to bring them to reason—or I will say to reconcile them. To bring them to reason is rather a big word.

4649. But if there were 10 cases in each of the 55 county courts, and they were all brought to the High Court or their Commissioners, it would mean 550, whereas distributed over the county courts it is only 10 each?—Well, the majority of those 500 would be undefended.

4650. Then they would not take up much time in the county courts?—Oh, I do not know that, if the judge is going to give a quarter of an hour, or more, to each, as he ought to do.

4651. Would the county court judge have to give more time than the High Court judge to the undefended cases?—Certainly, at the beginning.

4652. Until he has experience of that class of work?—Yes.

4653. (*Sir Lewis Dibdin.*) I suppose he would get his experience much more slowly than the High Court judge, because he would have so many fewer divorce cases than the High Court which has them all?—Yes, that follows, I think.

4654. With the assistance of skilled lawyers?—Yes. I do not know what the experience of the judges is, but I always understood they did value the services of the Bar who practise in that court.

4655. With regard to the publication of reports, you have said it is a very difficult matter, and no doubt it is. The grounds that are urged before us against publication are chiefly the ones you have considered—the question of its being demoralising (we shall all agree they often are); and, secondly, the difficulty the witnesses feel sometimes and disinclination to come because they do not like to appear in the newspaper; and, thirdly, we had a great deal of evidence on the way the newspaper reports were used for blackmailing purposes. Have you had any experience of that kind? Have you heard of such cases?—No, not in the way of blackmail. I have known co-respondents and their solicitors ask one to settle it out of court, and it has been done—money has been paid to stifle the case, and it has been accepted. I can remember several cases of that kind

4656. Which, perhaps, would not have been done if it had not been for the newspaper report that would certainly follow a trial. Is that what you mean?—I do; but I am bound to say that the party who wanted it settled was guilty.

4657. Well, the kind of case that was put to us was the case of a man going with a woman, not knowing she was married, and then the concealed husband round the corner following him home and saying: "Now I am going for a divorce unless you pay up"?—I have only known one of those cases.

4658. You do not think they are common?—No, I do not think it is very common.

4659. Do you think it would answer all the purposes of publication if the result only of divorce cases was allowed to be published?—I not think there is any particular harm in that.

4660. I do not mean there is any harm in it. But would that be adequate for the purposes of publication?—Well, what I have in my mind as an objection to all that is this: There is always an immense amount of talk before these cases come into court—an immense amount of harm is done to one or other of the parties by gossip. Unless it is cleared up in some way by the finding of the court, and the evidence, it still remains and the mud sticks, and it is a cruel thing to innocent people that that should remain by reason of some decree being pronounced when nobody knows anything about the circumstances.

4661. Would not that be obviated by the publication of the result merely?—No, it might not.

4662. I suppose one of the hardships of reporting is the trouble it involves in the case of a witness whose evidence is published while the case is going on, although in the end the witness may be entirely free from blame. The result may show that the witness is in no degree to blame, but in the meantime he may have to go through a great deal of trouble and anxiety?—Yes.

4663. Would it meet that difficulty if reports of divorce cases were prohibited till the result was given, and then let a newspaper report appear of the whole case?—It would be valuable for this reason to witnesses. A witness tells an improbable story which is true, and people say, "What a liar!" and if that gets to his or her ears, as it is bound to do, it will shake them, and it injures them when they get into the witness box the next day.

4664. Then if what is suggested as to the results only was done, it might prevent that kind of injury?—No; I think the only way to prevent that in those circumstances would be to try the case in camera.

4665. I wanted to ask you about your proposed extension of the grounds of divorce. I think you told the Archbishop of York that you did regard as of great importance the sanctity of the marriage tie, I mean the maintenance of a high condition of public opinion as to the maintenance of the marriage tie?—Certainly, very.

4666. Do you regard that as important for the welfare of the State?—I do.

4667. Now the particular cases you have dealt with; some of them are very hard cases indeed, but they are all cases of individual hardship. Hardship in particular cases are they not; cases like the woman whose husband gets 10 years penal servitude and so on?—Yes.

4668. In regarding the whole question, do not you think you must strike a balance between the two views—justice in the particular case, and the general effect of the alteration of the law upon public opinion?—Yes, but I think public opinion on the whole has been in favour of those for a very long time—on the whole.

4669. And you consider in your view that you have given due regard to both sides of the matter I have indicated?—Oh, I do, because I do not think the people who have this right will be in a hurry to avail themselves of it except in cases of great need.

4670. But is it not possible by enlarging the grounds of divorce to make marriage as a whole in the public mind loom as less permanent, and a less sacred tie than it does at present?—That I cannot say.

4671. Is not that one point of view from which the matter ought to be looked at?—It is a point of view from which some people may look at it, but I do not know that the majority do.

4672. But do you think rightly or wrongly?—Oh, I think wrongly, because I do not think that those who have any regard for the marriage tie will seek to make it less earnest than it is at present for those reasons.

4673. Now in reference to the religious aspect of the matter. In your view does that come in at all in connection with your suggestions?—Oh, yes. With regard to desertion, it is held I gather in Scotland that that is warranted by something in the Scriptures, I think it is put by Fraser, page 1207: "The ground for "holding malicious desertion as a ground for divorce "is traced to apostolic sanction."

4674. He says he does not think much of that argument, does he not?—But, curiously enough, Mr. Gladstone did.

4675. But Mr. Fraser says that I think?—No, I think not. He says, "And there can be no doubt that "malicious desertion is as grievous a violation of the "conjugal vow as adultery, and in expedience and "justice ought to be visited with equal punishment "equally heavy with that meted out to adultery.' That is what he says.

4676. I think Mr. Fraser is dealing rather with his view of the general aspect of it than with regard to any religious teaching. I did not want to invite you into a theological discussion, but I wanted to know if your view was in harmony with the teaching of the New Testament, or if the New Testament in this context does not apply or is irrelevant or what?—Well, one's teachers differ so much upon the matter. I have been reading Gladstone most carefully upon the Act of 1857, and I find he says that even for adultery there should be no divorce; and it is on the interpretation of the Greek that he puts it.

4677. Then in view of the difference of opinion amongst different religious teachers, you throw that aside as out of it altogether?—No, I do not throw religious teaching out of it at all. I import into it for adultery and desertion, according to the information I can get on those points.

4678 So, in your view, it is consistent with religious teaching?—As far as I am competent to be a judge of it.

(*Sir Lewis Dibdin.*) I only wanted the attitude of your mind.

4679. (*The Archbishop of York.*) And insanity, Mr. Priestley?—I have not considered that from the religious point of view at all, because I do not find anything on it at all.

4680. (*Sir Lewis Dibdin.*) I wanted you to apply your mind a little to insanity. First of all to penal servitude for a long term. You have told Mrs. Tennant your view of that, but I think you have in your mind, from your answer to her, crimes of great magnitude and great depravity. Now, take a case which you know has often happened. A bad case of manslaughter; sudden anger; something which, though very wicked, does not go to the permanent abasement of character. Would you say there that it was not adding an element of hopelessness altogether to the sentence, if when a man got penal servitude it carries with it the consciousness that his wife can throw him off if she likes?—I think he should have taken it all into consideration just as much as the possibility that he might get a sentence for his crime. I look at it from this point of view: that when he commits a crime like that, and goes to prison, he has practically deserted his wife.

4681. Would you enlarge on that. I do not follow it?—He has practically put himself away from her just as much as if he ran away from her.

4682. He has done something which has rendered his marriage life impossible for the time?—Out of the question.

4683. And do you think it would be right to put this potential divorce upon him too?—I am not looking at it from his point of view, but from hers.

4684. Yes, but I suppose you will agree that his side must be looked at from some points of view?—I do; but if the judge knows that, he may take it into consideration in sentencing him.

4685. I agree. Do not you think, just as in the old days for sheep stealing, that the judge would be influenced to give less than he should have given, so that the man shall not have this additional penalty?—Then he would not be exercising the proper functions of a judge.

4686. That is what happened in the old days when people were hanged for sheep stealing?—I am not aware what happened.

4687. Now the case of permanent insanity. You think that ought to be treated as a ground for divorce, but not a case as I understand of intermittent insanity?—No, it never occurred to me to suggest it.

4688. And yet I suppose the danger of bringing children into the world, who might have the same taint of insanity, is much greater in the second case than in the first case?—Yes, it is, but the wife has it in her power to a certain extent there, because she can refuse to allow any marital intercourse.

4689. While living with her husband she can refuse conjugal intercourse?—The law can only at present order him to return to her house and her to take him, but it cannot make them do anything more.

4690. Do you think that is really a safeguard from such children being born?—It ought to be.

4691. A woman having knowledge that her husband is liable to outbreaks of insanity?—If she is a sensible woman.

4692. Do you think practically it would have the effect you suggest?—I think certainly it would, if they ever thought about it at all.

4693. Now, what do you say about the case of hopeless paralysis when a man is a living mummy. Unhappily there are such cases. Ought that to be a case for divorce?—It depends whether it has affected the brain or not.

4694. No, I am taking the case of simple paralysis?—Oh, I did not say anything short of insanity.

4695. I know you did not. I want your opinion now?—Oh, I beg your pardon. I have never thought about it. I do not think so. I think that is a matter of ill-health which was one of the matters for which marriage was ordained.

4626. Taking it for good and for bad?—Yes, in sickness and in health.

4697. But let me point out that the purposes of marriage are as absolutely impossible in that case as in cases of permanent insanity, are they not?—I do not know. They can be as much together in mind as ever they were before, and it must not be supposed that married people are always going to be married only for one thing.

4698. Now, with regard to desertion. As I gather you are not in favour of divorce, as I understand some witnesses are, on the ground of mutual consent?—Oh, no.

4699. Of course I follow you are very far from that, but if you allow divorce for desertion, surely you put it in the power of man and wife at any time to bring about a divorce by just arranging for one party to go?—Yes, but they will not do it is my experience if there is any affection between them—no more in that case than they did before. If a man deserts his wife now because he has other objects in view, he is tired of her.

4700. But supposing there is no affection between them, then if he deserts her it is not at her request?—She will have to do in future exactly as she does now. In theory and in practice desertion is one spouse leaving the other against the wish of the deserted spouse.

4701. I did not think you limited desertion to that. I am supposing a man and wife got quite tired of one another, and it is arranged that the man goes; goes for good and all: "Now I will go, and at the end of two years you will get a divorce"?—But, sir, that would not be desertion.

4702. It would not?—No.

4703. Not in your view?—Not in our court. Desertion is wilfully absenting of the one spouse against the wish of the other, and at all times during the two years the one must have been prepared to take the other back.

4704. If I may say so I think this is very important. Then your view of the extension of the grounds of

divorce on the ground of desertion only extends to cases where one party is left without any arrangement with the other side at all?—Absolutely. I want it strictly defined, and that is why I say desertion has as much law in it as fact, because it has been laid down in very narrow limits.

4705. Then you would retain that?—Yes.

4706. With regard to the grounds of nullity in the Roman Church which you read out as existing in Austria; although there are a great many of them they come only under one or two heads, do they not?—Oh, I do not know that. I think there are a good many refinements.

4707. Have you gone into them?—No, not very closely.

4708. I suggest to you they are different subdivisions of very much the same grounds of nullity as we have in England?—Oh, really.

(*Sir Lewis Dibdin.*) I will not follow it up.

(*Chairman.*) There are only two grounds in England; impotence or previous marriage.

(*Sir Lewis Dibdin.*) Or want of identity of the people married.

(*Witness.*) And want of consent; fraud and duress.

(*Chairman.*) That is no marriage.

4709. (*Judge Tindal Atkinson.*) I believe you admit there is some remedy required for the poorer classes of the community?—I gather that from the delay in certain of my own cases.

4710. Not only from delay, but from expense?—Yes, chiefly from the court fees.

4711. Are not the greater expenses those of bringing the parties and the witnesses from long distances up to London?—I do not think so, for this reason. I cannot believe that in a very simple undefended case the costs can come to anything like 40*l.* to 45*l.*, because it is generally supposed that the counsel's fees are the biggest item, but you remember in many cases two and one is the ordinary fee of the counsel, and perhaps a fee for settlement of petition. That does not take a large slice out of 40*l.* or 45*l.* The court fees are about 7*l.*, and sometimes it only takes two witnesses to prove a case.

4712. But if you are bringing them from Cornwall or Northumberland?—It comes to only about 6*l.*

4713. And an income of 25*s.* a week, and they have to bring two witnesses; is not that impossible?—I do not think it is impossible, because in many of the cases I have had they have managed to do it either by getting their friends to help them or saving up.

4714. But you do not know how many have not been able to do it?—Of course not.

4715. Then assuming there is a necessity for the poorer people to have local courts, your view is that that work can be done by special Commissioners?—Yes.

4716. Have you considered if the special Commissioners have to travel in every county all over the kingdom to what towns they would have to go, and how long they would be away?—I have not considered it, but I do not think it would be very difficult.

4717. One word in reference to the county courts. County court judges are brought into close contact with the people who appear before them?—Yes.

4718. Do not you think they can and do in a great number of cases bring about reconciliation between the parties in regard to their disputes?—Possibly.

4719. And they could equally do that conciliation in the cases of divorce?—They could if they could give the time to it.

4720. Now, about the time. I suppose you will admit the giving of time is a mere question of rearrangement of the machinery of the courts?—Oh, yes.

4721. And as the Lord Chancellor can appoint 60 judges, and has only appointed 55, in that way any want could be remedied?—Only to the extent of 5.

4722. Five would make a great deal of difference, because your two Commissioners have to do all this work, and five extra judges could do it easily enough?—If they are to go on circuit, yes.

4723. Travelling about and assisting the other judges. Now, I will leave that. Then, you say, if both parties are guilty, there should be no remedy in the Divorce Court to a guilty party. That is your view?—It is.

4724. Except in extreme cases?—Yes.

4725. Suppose a husband leaves the wife and lives with another woman, and the wife lives with another man separately, is it not in the interests of the community that those people should be divorced and have an opportunity of re-marrying, particularly having reference to the fact that the adulterous connection of the two may bring into existence a certain number of illegitimate children?—That is where opinions differ so largely. I quite recognise that is the view in Scotland, and recrimination is not permitted there; and it is for that very same reason; but it strikes me as a great injustice to a woman to be divorced when her husband's adultery has probably caused her to do the same, and that has to be set against the other inconvenience.

4726. But what good can exist by keeping the marriage?—I do not think any good comes from it at all, but it seems unjust that the woman should be stamped as the guilty party, without the other being stamped as the same.

4727. It comes as an injustice?—To the wife who has been brought down to this, if she is the divorced party.

4728. (*Chairman.*) Just two or three questions suggested by your answers. In answer to Mr. Spender, you referred to there being no objection to the county court jurisdiction, if it were confined to poor cases?—No, to the machinery of the county court. That is with regard to maintenance and alimony, and so on.

4729. You did not apply that to the trial?—No, I did not.

4730. With regard to the trial, a good deal of your points in answer to some of the Commissioners, was as to the danger of different views at different courts?—Yes.

4731. I daresay you heard the suggestions I put to Mr. Barnard. Are not those all questions of fact that have to be determined, except possibly the way in which cruelty is to be looked at?—And desertion.

4732. But if those two cases were clearly defined in the statute?—I know they are questions of fact, but if you are going to give them a jury when they want it, the objection is very largely got rid of, but if it is to be forced before one man alone, then I am strongly against it.

4733. One other matter. You said you have known cases in which a wife has forgiven the husband many times?—Yes.

4734. Do you know the converse case?—Where the husband has forgiven the wife?

4735. Yes?—Oh, yes, many.

4736. Many?—Many times.

4737. Some one suggested it was not so likely?—Oh, it is.

4738. Both for adultery and other offences?—The wife forgiving the husband other offences.

4739. And the husband forgiving the wife?—For adultery, yes.

(*Chairman.*) We are all very much obliged to you, Mr. Priestley, for your evidence.

The following is a specimen list of charges put in and referred to by the witness:—

Item.	Fees.		
	Undefended.	Defended.	Common Jury.
	£ s. d.	£ s. d.	£ s. d.
Filing petition	0 2 6	0 2 6	0 2 6
„ affidavit, verifying	0 2 6	0 2 6	0 2 6
Issuing citation	0 5 0	0 5 0	0 5 0
Office copy petition (6*d.* per folio), usually folios 6*	0 3 0	0 3 0	0 3 0
Sealing	0 5 0	0 5 0	0 5 0
Collating	0 2 6	0 2 6	0 2 6
(The four foregoing fees are duplicated in the case of each co-respondent who has to be served.) (Take as usual one co-respondent)	0 15 6	0 15 6	0 15 6
Returning citation (2)	0 5 0	0 5 0	0 5 0
Entering appearances (respondent and co-respondent)	—	0 4 0	0 4 0
Searching appearance	0 1 0	0 1 0	0 1 0
Filing affidavits of service (respondent and co-respondent)	0 5 0	—	—
Summons for time to file answer	—	0 3 0	0 3 0
Order thereon	—	0 5 0	0 5 0
Filing answer (respondent and co-respondent)	—	0 5 0	0 5 0
Filing affidavit of search and no appearance	0 2 6	—	—
Searching minutes	0 2 6	—	—
Setting down for trial and for decree	3 0 0	3 0 0	3 0 0
Filing registrar's certificate	0 2 6	0 2 6	0 2 6
Filing notice of setting down	—	0 2 6	0 2 6
Filing draft questions for the jury	—	—	0 2 6
Settling do.	—	—	0 10 0
Filing wife's cost for taxation	0 2 6	0 2 6	0 2 6
Taxing fees (1*s.* every 2*l.* allowed), say	1 5 0	1 15 0	1 15 0
Reference to Registrar to settle security for wife's cost of trial.	0 10 0	0 10 0	0 10 0
Order for payment of costs	0 5 0	0 5 0	0 5 0
Order for further security	0 5 0	0 5 0	0 5 0
Subpœna (5*s.* for every three witnesses)	0 5 0	0 10 0	0 10 0
Decree absolute:			
Searching appearance book and minutes for intervention	0 3 6	0 3 6	0 3 6
Setting down motion	0 10 0	0 10 0	0 10 0
Where there is a co-respondent	9 0 6	10 5 0	10 17 6
Where not Deduct	2 7 6	—	—
	6 13 0	—	—

* Have only one sealed copy petition and serve plain copy, producing original like writ now.

NOTE.—The above are the usual fees payable in cases where there are complications or anything requiring interlocutory applications. In any such cases the fees of 3*s.* and 5*s.* have to be paid for each summons and order, and 10*s.* and 5*s.* for each motion, besides 2*s.* 6*d.* for every affidavit or other document filed on either side. In many cases, for instance, applications for leave to dispense with co-respondent, or to effect substituted service, would increase the fees by 25*s.* or more, and if advertisements ordered, the fees would be increased by a further 1*l.*

Mr. CHARLES JOHNSTONE WILLOCK called and examined.

4740. (*Chairman.*) You are a member of the Junior Bar, but you have a large number of years experience in the Divorce Court?—Yes.

4741. And Probate Court?—Yes.

4742. You have heard Mr. Priestley's evidence?—Yes.

4743. I have read your proof. Having heard his evidence, are you in the main in accord with him?—I am in the main.

4744. Would you point out very shortly if there is any point on which you wish to express a different view?—I do not know quite so much as to different views, as perhaps giving other arguments in favour of what has been said. You have asked once or twice why it was thought so necessary to have uniformity of practice before county court judges, and have been given the answer that the county court judges are so much more numerous than the judges of the High Court. I take it it is chiefly undefended cases that are to be tried before county court judges. To my mind, the undefended case is not the simple case the Commissioners have taken it to be. There are questions of delay, and connivance and collusion, and conduct conducing, and the very important question of domicil that every judge who is trying a defended or undefended case must inquire into—much more in undefended cases because there is nobody to bring it out on the other side. In defended cases there is an act on petition, and a separate issue tried beforehand very often.

4745. Do you anticipate much difficulty with regard to that amongst the working classes?—Yes; my knowledge of the matter is that there are an enormous number of foreigners amongst the working classes especially in the east end of London, but perhaps those would be tried in the High Court; but in the ports of England there are an enormous number of foreigners.

4746. In separation order cases the question of domicil does not arise?—No, they came under the jurisdiction of the bishop in the old ecclesiastical days. It only arises on a question of divorce.

4747. But the difficulty is met in practice by an affidavit as to the verification of domicil?—Yes, but I mean the issue that has to be tried.

4748. In an undefended case there is no opportunity of testing that unless you happen to hear the Irish accent or something of that sort?—Then it does not always follow, because they come to England and live here. I was "devil," as we call it, to Sir Bargrave Deane for a number of years, and I know what other members practising in the court think, and they always look into it and advise their client upon a question of domicil; and it is a very rash practitioner who would let the case come into court until he had looked into the facts and seen if there was condonation or delay, or before he had inquired about domicil. That is why these cases take the proverbial 15 minutes.

4749. Would that be met by letting the *formâ pauperis* cases always be submitted to counsel before they come on?—I doubt if that would cheapen matters.

4750. I have always understood that a pauper cannot proceed without the opinion of counsel?—That is so.

4751. Would it be your opinion that that would be met by letting the counsel say it is a fit case to proceed?—I doubt it. I have had a good many *formâ pauperis* cases; solicitors who have instructed me have asked me to take such cases for them, and I have given the opinion that the man has a *primâ facie* case, but when it comes to trial they have not taken the proofs on the point of domicil.

4752. Is there any other point in this?—Then I think the great expense is not merely the differences in the railway fares. It is a question of medical men and solicitors having to come to London; I think in an undefended case if the medical man, for instance, has to give evidence of venereal disease, there would be no question of his not being truthful, and he should be allowed to make an affidavit; and the solicitor also for some purposes could do that.

4753. Are there many cases in which you find it is necessary to bring a medical man?—Oh, a great many, because apart from these cases of disease there are the cases where the health of the wife has broken down because of the conduct of the husband.

4754. Is not that expense of the medical man and the solicitor coming to London got rid of by trying it in the county court, where the judge, whether of the standard of the High Court or county court, could see them?—I think not in undefended cases in the case of a medical man. Take the case of a man living in Newcastle, or of a petitioning wife, and the misconduct of the husband has taken place in Cardiff or Plymouth. All the witnesses would have to go up to the county court judge; and London is very central. I do not think the question of fares is anything like important enough to run the risk of cases being tried at courts less competent than the Divorce Court in London.

4755. Then how about interlocutory matters and those being dealt with in the country?—Interlocutory matters only occur in defended cases really, and I think they should be dealt with by judges of the High Court. I am strongly of opinion that there should be a judge of the High Court travelling the country, going to centres. I do not think they need be counties, but that the country should be mapped out in certain centres where he could sit. It might require a third Divorce Court judge. I think if the country is going to cheapen divorce for poor people the country ought to pay for it, and I do not think one more judge in the Divorce Court would be more expensive than the five more county court judges that it was suggested the Lord Chancellor had the power to appoint. From that point of view the Admiralty Court might be joined to the Commercial Court, and the two Divorce Court judges could be in London to try the wealthier cases, and one of them could go on circuit from time to time.

4756. What is the basis of your objection?—The basis of my objection to their being tried in the county court is not a question of time, because that could be got over, but the want of a judge who is accustomed to the work, and who has devoted all his time to it, not one "picking it up in a month." It is some years ago when Sir Francis Jeune and your Lordship in alternate years were not well, and your Lordship was absent nearly a year. It then frequently happened if the Court of Appeal was not busy they swooped down upon us, as it were, and we had three or four courts. I was only studying with Mr. Bargrave Deane, and there were eight or nine different judges at that time who tried divorce cases. I did not know as much about it as I do now, and the judges knew nothing, and I know the cases took a great deal more than the proverbial 15 minutes. They asked questions I could not answer at the moment as I could now, I hope, and they asked irrelevant questions. In one case there was no defence, and the judge said, "Oh, very well, judgment by default," and we had to point out that the State required it to be proved.

4757. Then Judge Tindal Atkinson would possibly be in no worse position than a recently appointed judge?—Except for this reason. When the judge has been sitting only a short time, at any rate he has a bar practised in that particular work before him; barristers who are in point of honour bound not to let the new judge go wrong in his practice—not to go wrong in the vital principles that have always governed his predecessors, and to point out statutes to him which would alter his opinion.

4758. Is there anything you would like to add, because, as I said, your proof seems very much the same as Mr. Priestley's?—Well, we have practised together in the same court.

4759. If you agree with him I need not ask you anything more?—I might say this; I am strongly of opinion that with regard to the question of adultery the ground should be equal for husband and wife. I am putting that not so much perhaps from the outside view, for I hold the same opinion as a layman, but I want to give reasons as a practitioner in the Divorce Court. If a man commits adultery the wife is only entitled to a judicial separation. I may say I have frequently advised wives not to apply for a judicial separation on the ground of adultery only. As Mr. Barnard said, she could get no security for maintenance. She could only get alimony for joint lives. She could never get a divorce unless he was guilty of bigamy or some grave offence. It has been from what I have seen myself a great inducement to collusion. The wife has done all she could to construe into cruelty what might not be cruelty, and the wife has done all she could to construe into desertion what might not be desertion. Again, the husband by committing the double offence—adding cruelty or desertion to adultery—confers upon himself a right which he would not have otherwise, namely, of re-marriage. Therefore it is almost an inducement to him to assault his wife if he has misconducted himself.

4760. Each side may be induced to put things forward that do not exist?—That does happen. In restitution cases the wife often knows the husband has committed adultery; she only has to have a quarrel with him, and he will say, "I will not live with you." Then she writes him a letter to come back, and he does not. Then there is a petition filed against him and he says instantly, "Oh, here is a chance to have a divorce"; and so he agrees.

4761. And he does not defend?—He does not defend. I will not say "agrees." Mr. Barnard was asked whether in a case of bringing an adulterous woman into the house, the wife should not be granted a divorce, and he said, yes, because that would cause injury to health. That shows plainly the same spirit in the mind of Mr. Barnard—a desire to stretch the adultery into something more than adultery—namely, injury to health.

4762. You do not draw much distinction between adultery committed in the house and adultery committed in the next house?—I did not want to go into the ethics of the case, and I was trying only to show the point. If a man commits adultery next door the wife could get a judicial separation, and he could not divorce her, and she could not divorce him.

4763. You think they should be equally entitled and that the inequality is got ever by improper attempts and agreeing to things and consenting to things?—Yes. In the majority of cases there is a question of what will make desertion. Within the last week or two I

have had a case of a young couple marrying improvidently without the knowledge of their parents. She found afterwards that he was not as well off as she thought, and he found she was not as sweet-tempered as he thought, and they separated: after 10 years she found he had been living with another woman and had children. They could not get a divorce, because they agreed to separate, as there was no desertion, and she could not get any relief from him. He had been living with some other woman—whether he seduced her or not I do not know, but she could not get relief.

4764. Then do you think that separation leads to immorality?—Well, I know I wrote in my proof that I thought separation did not conduce to immorality more than divorce, but I meant "breaking up homes." I think if you have very easy divorce it will lead to immorality in the sense of making people collude and lie and commit perjury and do all they can to be freed.

4765. But supposing there are real grievances such as you put in regard to after 10 years finding this out. If that was removed would not that diminish or tend to remove all this collusion?—I think it would, and from that point of view I think there should be equal rights between the sexes, quite apart from my own view, as expressed by Mr. Justice Bargrave Deane, of one party being as unclean as the other in such circumstances. But I was going to the question of the community at large, and therefore of the State, compelling people to all sorts of subterfuges.

4766. Is there anything else you would like to add?—With regard to incurable insanity. I go further than Mr. Barnard does, because I think it ought to be insanity——

4767. Yes, you agree with Mr. Priestley?—Yes; but I think a very good suggestion was put forward by Sir John Bigham with regard to insanity arising after 15 or 20 years of married life when two people had been living together for better for worse, that then dissolution should not be granted in such cases. I would put it in the discretion of the judge in nearly all cases. One cannot say 10, 15, or 20 years, but in the discretion of the judge, and the same way as in cruelty. Desertion is a definite thing; adultery is a definite thing; but I do not think one can say insanity is so definite, nor cruelty. A man may knock his wife down and that may be injury to health, but is that enough for a divorce? I think extreme cases of cruelty should be a ground for a divorce.

4768. Then is there anything else?—I want to say this, if the law was to be altered to desertion for 2, 4 or 5 years alone as being a reason for dissolution, in that case I think the law should be altered as to restitution of conjugal rights and it should be this: "The desertion of which a respondent who has failed "to comply with a decree for restitution of conjugal "rights shall be deemed to have been guilty shall "commence from the date of such decree." At present if a man disobeys it for 14 days he is *ipso facto* guilty of desertion, and the wife can obtain a judicial separation, but if there is to be divorce for desertion then there will be only 14 days that have to elapse, and she can get a divorce.

4769. I do not think anybody suggested that desertion should be a ground for divorce merely because a suit was instituted and the respondent refused to obey the restitution decree. I think everybody meant actual desertion after a definite period?—But your Lordship knows in this particular Act (Restitution of Conjugal Rights Act of 1884), if a man disobeys the order——

4770. He is guilty of desertion?—As for two years and upwards.

4771. That would have to be got rid of?—My suggestion is that there should be merely a finding and that then the desertion should commence from that time. I mean that the provision of the statute should be rescinded. This would enable a wife to ascertain once for all if the husband intended to return or not. Then she could get alimony and custody. I want to emphasise this, because if the law were altered so that a woman could get a divorce after four years desertion, what is the woman to do during those four years? She would have nothing to live upon.

4772. You would give power for restitution of conjugal rights?—Yes.

4773. With power to make orders during the period from then for her maintenance?—Yes, and custody of the children in the same way as she can obtain from the magistrate now.

4774. That there should be that order, and during the time she should be able to get orders for maintenance and so on?—Yes; I have been listening to the evidence, and I was afraid that might be overlooked. The poor woman might have to wait four or five years without anything.

4775. You would rescind the present position of judicial separation leaving the power that she could get an order to return?—Yes.

4776. And if he does not, then desertion would commence?—Yes. I do not know whether the question of legitimatising children is germane to this?

4777. By a subsequent marriage?—Yes; I do not think it is. Then there is the suggestion that the judges should see the parties, directly the proceedings have been commenced, and I think Sir John Bigham said it should be at the very beginning. I think it would be impracticable. He would, at least, have to wait until the answer was filed, and I think he would have to wait until the opening of the case.

4778. Would not you give him a discretion at an early stage, if he thought fit?—We will assume that a man or a woman has gone away with a paramour. What would happen?

4779. It would be no use then?—No.

4780. But in cases where the judge thought fit?—I think the judge merely from reading the pleadings could hardly tell if it was a fit case. He would have to see the answer put in, at any rate. There are cases where the judge, after hearing both sides, or perhaps only the opening, says this is a case that ought to be settled, but that is very different from doing it directly the petition is filed.

4781. (*Mr. Brierley.*) Did I understand you to say you considered a trial by the High Court judge was more necessary in undefended cases than in others?—I think quite as much, because the judge presiding does not have the assistance of counsel on both sides—in cross-examination.

4782. But we have had it stated in evidence, that there are very few undefended cases that result otherwise than in a judgment for the petitioner?—I think that arises from the fact that at present they are all tried in a court where there are barristers skilled in those cases, if I may say so, and it is a slur upon a barrister if he allows an undefended case to be dismissed, because either it shows there was no case, or he has not worked it up.

4783. Then does it not show you lay more stress on the case being before an experienced Bar than before the High Court?—You want an experienced Bar, because you have an experienced judge, who knows what is wrong.

4784. But after they get into court, an undefended case very seldom results otherwise than in a judgment for the petitioner?—Yes, I say an experienced practitioner should not let an undefended case be defeated, he should not bring it forward.

4785. You lay stress on an experienced counsel being employed in it before it comes to the court?—But I do not think an experienced judge would allow the case through, or would dismiss it because of the counsel engaged. It is a question of going through much quicker——

4786. But it is not so much a question of time?—It was only that I thought there might be misapprehension as to the character of these undefended cases.

4787. (*Judge Tindal Atkinson.*) Is counsel engaged in every case?—No; perhaps once or twice in a term there is somebody in person, and then the judge acts as counsel, and inevitably they are adjourned, because they are not in order.

4788. Are there not many cases when counsel does not come into the case or the trial, and the solicitor does all the preliminary work?—Well, I may have been unfortunate, but I have found in the bulk of cases where

the brief has been handed to me ready for trial, that it has not been ready, and I have had to ask for it to stand over as the papers were not in order.

4789. I suppose there are plenty of solicitors who are competent to commence proceedings in the divorce court?—Undoubtedly.

4790. Both in London and the country?—Of course.

4791. And many of those may be practising in the county courts?—I presume so.

(*Chairman.*) We are much obliged to you for your evidence.

Adjourned until to-morrow morning at 10.30.

Winchester House, St. James's Square, London, S.W.

EIGHTH DAY.

Tuesday, 8th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. ROBERT ERNEST MOORE called and examined.

4792. (*Chairman.*) You are a member of the Bar?—I am.

4793. You are B.A. and LL.B. of Cambridge, and were called to the Bar in 1887?—Yes.

4794. Have you been for seven years associated with the Poor Man's Lawyer Department at Cambridge House, the Cambridge University Settlement in Camberwell Road?—That is so.

4795. That department was originally started by your friend Mr. Leese, and you assisted him in the work for some years?—That is so.

4796. Is that with the object of providing free legal advice to those who are too poor to pay a solicitor?—Free legal advice.

4797. A trained lawyer sits once a week to give legal advice to every applicant who can satisfy him that he really belongs to the class whom it is desired to help?—Yes.

4798. Then Mr. Leese gave up the Bar, became a solicitor, and you took on the management?—That is so. Before Mr. Leese left he managed it almost exclusively himself. I used to go down occasionally to assist him, but it was not so much a department as it is now.

4799. How long have you had the superior charge?—Three and a half years I have had complete charge.

4800. You work with the assistance of other legal friends?—That is so.

4801. Have you yourself given personal advice to a large number of applicants?—Yes, over 1,000. It certainly runs to over 1,000 I myself have personally given advice to.

4802. Have you kept in touch with your friends who assisted you, and compared notes?—Yes. Recently I have not had the time to go so much, but it is the general rule that any case of difficulty should be referred to me.

4803. I want to gather the extent to which you inquire into matters. Do you inquire practically all about the applicants?—As far as we can in the time at our disposal, which is limited. One has to get through many cases in two hours. It is often extended to three hours, as a matter of fact.

4804. Have you acquired in that way a considerable knowledge of the poor?—I think so.

4805. And their legal difficulties?—I think so, and their *quasi* legal difficulties.

4806. They are not confined to divorce questions?—No.

4807. Do those difficulties include divorce matters?—Undoubtedly; those questions are very common.

4808. You have numbers of those before you?—Yes.

4809. Will you give us any important point at the outset which has struck you with regard to giving advice?—One point which has struck me very forcibly is the frequency of the cases in which the applicants are living with a member of the opposite sex without having been married. I think that is extremely common. I think my experience has been the same as that of everyone engaged in giving free legal advice. I have compared notes with a good many, not merely those assisting at Cambridge House, but those doing similar work in connection with other institutions.

4810. Do you find that there is any legal obstacle existing generally?—More often than not; there are many cases in which no legal obstacle exists, but more often than not there is some legal obstacle.

4811. That is to say, another marriage?—Yes, usually.

4812. Do you find those people have any sense of wrong upon this point?—As a rule, no; they look upon it as a matter of necessity.

4813. The life with a mate?—Yes. In that class of life, more than, perhaps, in any other class, the necessity for a mate of the opposite sex is felt very urgently. It is the same with regard to affiliation orders. I must say that the marriage tie, as a rule, seems to me to be held in very low esteem altogether; very little importance is attached to it. There is no sense of shame in acknowledging their irregular sexual arrangements.

4814. Is that confined to the parties to those irregularities, or does it extend to the friends and neighbours who know them?—It extends to the friends and neighbours most distinctly.

4815. What conclusion have you drawn from that?—As I say in my proof, I have been driven to the conclusion that amongst the very poor, of whom alone I can speak, no sanctity whatever, and very little importance, is in general attached to the marriage tie. I do not say that they attach no importance to it, for I believe that on the whole the women prefer to be legally

married to the man they live with, and where no obstacle exists to a legal union will, as a rule, insist on marriage before commencing cohabitation. This preference is, however, in my opinion due mainly to the legal hold over her husband which marriage gives to a woman, rather than to any sense of the sanctity of marriage or to a recognition of the immorality of irregular unions. This, I think, is shown by the fact that when any substantial obstacle, legal or otherwise, exists to the legal marriage of the parties, they will as a rule be quite ready to dispense with what they, in so many cases, regard as a mere formality.

4816. You have narrated a particular state of circumstances. How does this bear upon the question of separation orders and divorce, in your opinion?—I must say I think that the low esteem in which marriage is held by the very poor is very largely due to the difficulty of dissolving the marriage tie.

4817. What has led you to that conclusion: what are the grounds upon which you have formed that view?—I think if there were greater facilities for obtaining a divorce in cases where good ground for divorce existed, the innocent party would, as a rule, seek the dissolution of the existing marriage before entering into a fresh partnership, and would contract a legal marriage with the new partner before commencing cohabitation.

4818. Do you mean by that that they prefer to have a legal tie, but that if they cannot get a proper legal tie they contract an irregular union?—I think that is so. Certainly in the case of women, as I said just now, they prefer for practical reasons to have a legal tie, for the purpose of the hold it gives over the man.

4819. Is the difficulty, in your view, of obtaining a dissolution of a former legal tie due to expense, or want of extension of cause?—It is due to both. The expense, of course, is really the main obstacle. I may say, perhaps, expense is the main consideration everywhere: in London perhaps it is not so much as it is in the provincial districts, but in London as well as in the provincial districts the expense is prohibitive. I think the expense of obtaining a divorce under the present conditions is such as practically to amount to a denial of the benefit of the divorce laws to the very poor.

4820. After having investigated cases, you say that in a large number of cases the difficulty is the expense?—That is so.

4821. What is the remedy that you suggest with regard to expense?—When one comes to suggesting the remedy one approaches it with a great deal of diffidence. It is not easy to suggest any adequate remedy. In London I do not think the question of access to the High Court, so far as the question of distance is concerned, is a great obstacle. The great obstacle is purely and simply the expense of bringing the case before the court. You have to get your evidence. You have, in the great majority of cases, to employ a solicitor in order to do that, because the very poor are quite incapable for the most part of appreciating what evidence is required, and even if you could make them appreciate what evidence is required, it is then difficult for the very poor as a rule to collect it. A certain amount of money must be spent upon inquiries in the majority of cases. Then when you have the witnesses and the necessary proofs, you have to bring them up to the court and pay their expenses. If the witnesses lose a day's work (and in many cases, it is not one day but two or three days) they have to be paid. It is true there is the procedure *in formâ pauperis* which to some extent is of assistance, for it is naturally an advantage to get relieved from the court fees; but assuming you get relieved from the court fees the expenses I have indicated are such, that to a person of humble life, say a man earning 25*s.* a week, they are quite prohibitive. He must employ a solicitor, and having employed the solicitor, as a rule the solicitor cannot afford to work for nothing. Then there are these other expenses he has to incur in the matter of witnesses. It is difficult really to estimate what it really costs, but I have spoken to several people about it, solicitors and others, and it seems to me, as far as I can gather, that in the great majority of cases, even when you have got free from the court fees, it must cost about 18*l.* to get your divorce case through. Just think what that means to a man earning 25*s.* a week: still more so in the case of a woman who seeks a divorce from a husband, who is only earning 25*s.* a week. To ask them to find 18*l.* you might just as well ask them to find 100*l.*, it seems to me.

4822. You point out difficulties which have been presented to us. What, in your view, after advising these people for years, is the remedy you suggest?—In London I would suggest, very diffidently, that there should be an official solicitor attached to each district—whether you choose the county court or the police court, I do not know much matters—and it should be the duty of the official solicitor to investigate applications for leave to sue *in formâ pauperis*. If he thinks it is a proper case he ought to be able to render them assistance in the collection of evidence and in marshalling their evidence before the court. I am inclined to go further and to suggest in proper cases that the judge who tries the case should be authorised to certify for the payment of the expenses of witnesses out of the public purse.

4823. That would ensure an experienced official to look into the matter first, and if necessary in the end that the expense should be provided for their cases?—That is my idea.

4824. You mean as a national expense?—Yes. I think that whatever reform we have in the divorce laws with the object of bringing divorce within the reach of the very poor, must involve expense; but in this particular matter, with regard to this particular suggestion, I doubt whether it would be a heavy one, because I do not think the work which would be thrown on the official solicitor would be so great as to prevent him practising himself.

4825. The cases would not be sufficiently numerous?—No. I think he would be able to carry on private practice and take this as a department of his work, for a fee.

4826. If you adopted that system, would you take the cases he investigated before the county court or before the High Court?—I think the High Court in London. I cannot see any necessity in the London district for the county court.

4827. What do you say about beyond London?—I think you want a different system altogether, because everything I have said with regard to the prohibitive expense of divorce proceedings in London applies with additional force to the country. It is obvious when you have to bring people from Newcastle to London it is out of the question to expect that a man earning 25*s.* a week should do it. I think some form of local court is absolutely essential.

4828. We have certain courts at present?—Yes.

4829. Do you mean those, or a High Court judge going down, or what?—I certainly do not think it is necessary for a High Court judge to go down. My own suggestion that I have made in my proof—and again I put it to you with very great diffidence—is that there should be special district judges appointed, that the country should be mapped out into districts, and special judges appointed whose duty it should be to travel periodically round the circuit and dispose of all the divorce cases.

4830. Would it satisfy you if those special judges were selected county court judges?—I think so. I said in my proof I did not recommend the county courts, and my main reason for that was that I thought that the county courts had sufficient work already, but it was not because I did not believe that the county court judges were perfectly capable of exercising the jurisdiction. I think they are perfectly capable of exercising the jurisdiction. I should like to see a modification of my suggestion in this way, that there should be additional county court judges appointed, and a rota chosen from the county court judges, who should periodically go on circuit and dispose of divorce cases.

4831. Would you have your official solicitor still in those districts looking into those cases?—I think so.

4832. I can understand your official solicitor taking up what are more or less pauper cases, but would you make him a compulsory person to see to every case that

came in the county court, so that the judge, even though inexperienced, might rely upon them having been properly investigated before going into court?—I think there is a good deal to be said for it, but at present I have only considered it from the point of view of what you might call pauper cases.

4833. It occurred to me if you have an official solicitor, as you suggest, and it was his duty to investigate all cases of a small character before they go into court, a good deal of the objection to possible difficulties with judges of inexperience would be eliminated?—I agree, if I may be allowed to say so. I think a very great deal of the difficulty would be eliminated. May I say another thing with regard to county courts. One of the objections I had to county courts in the ordinary way was this: I do not think divorce cases ought to be treated in the same category as ordinary county court cases, that is to say, I do not think it is seemly that a divorce case should be sandwiched between judgment summonses and a running-down case. I think if divorces are disposed of in the county court they ought to be disposed of on separate days.

4834. Your present suggestion is a separate day and a selected judge?—Yes. So far as the status and capabilities of the county court judges are concerned. I have every confidence in them.

4835. With that guaranteed looking into the cases beforehand you think a good many difficulties might be eliminated?—I think so.

4836. Whatever court is selected, you think an appeal should lie to the Divorce Division, and there would be power to remove a case for trial to the High Court?—I think so.

4837. You would confine the district court, whatever it is, to cases of small character?—I think so.

4838. By that I mean where the people's means were not sufficient to come to the High Court?—I think so.

4839. The next point is the separation orders. I want to know what your experience leads you to say about them?—I think that separation orders, as the law stands at present, are absolutely essential. It is necessary for the protection of the wife in the majority of cases. I know it has been suggested that they are granted possibly on grounds which are too trivial in many cases. Of course, that may be so, but, speaking generally, I do not think it is the case. If it is so, in my opinion it is the fault of the administration of the law; it is not the fault of the law. If you only consider what the grounds for separation orders are, I think it almost forces it upon you that they are necessary. It is a physical protection to the wife.

4840. Has that led you to any views as to whether that law should remain the same or be altered?—I think separation orders undoubtedly tend to immorality; there is no getting over that.

4841. What is it that has led you to that conclusion?—In one's experience one finds that when separation orders have been granted the parties in such a number of cases strike up an irregular union, owing to the necessity I have already alluded to of having a mate.

4842. What is the remedy you suggest?—I do not know that I have any substantial remedy to provide for that, excepting making divorce easier.

4843. When you say "easier," that means on more extended grounds?—On more extended grounds; but, mainly, I had in my mind the bringing the benefit of the divorce laws within the reach of the very poor. I am not saying that there are not several changes which are desirable in the divorce laws. I had in my mind mainly the consideration that if there were access to the courts for the purpose of obtaining a dissolution of the marriage when good grounds for divorce exist, there would be much less resort to these separation orders.

4844. Will you tell me your experience of what happens when a separation order is made against a husband?—In such a large number of cases it is a pure farce as regards the maintenance; he simply laughs at the order. Although it works well from the point of view of protecting the woman from the husband's violence, there are so many ways in which a man can evade payment. He goes into a different district, for example, or he will not work, or cannot work. The woman is reluctant to bring him before the magistrate and ask that he should be committed to prison for not paying, and the magistrate is reluctant to do so, because he says, "If I send the man to prison "I might be depriving him of the means to pay." I think it would be a good thing if something could be done to make the consequences of the separation order rather more unpleasant to the man than they are at present.

4845. What could be more unpleasant?—It has been suggested to me, and I think it wants a considerable amount of consideration—I have put it in my proof—that the husband should in all cases be bound to go to a little trouble, that is to say, be bound to pay the money direct to an official of the court. It should not be left to the wife to summon the man in case of default; it should be the duty of the official to call upon the man if he does not pay, and at his own instance to bring him before the court and call upon him to show cause why some punitive order should not be made against him.

4846. That would be rather leaving it to the poor law authorities?—Yes.

4847. You also say that the time limit is not desirable? Will you tell us what you wish to say about that?—I did not know that I had said that.

4848. At present, application must be made within six months?—I beg your pardon, I was thinking of another point. I thought you were suggesting a limitation of separation orders for a certain period. The abolition of the six months' limit is certainly a reform which I think is necessary. The present rule may lead to a great deal of hardship, as, for instance, in the case of a wife who has allowed the six months to lapse because she cannot trace her husband. I cannot see any substantial reason for the rule.

4849. What would you alter it to?—I would not have any time limit at all.

4850. There are one or two other points. Would you allow the magistrates to make these orders permanent in the first instance?—I think so. I do not see any sufficient ground for granting them for a limited time. If they are granted on good grounds in the first instance it seems to me unnecessarily unjust and hard on the woman to compel her to come again.

4851. That is intelligible in cases of cruelty, but how does that apply in cases of desertion: why should there be any order for separation where the ground is mere desertion and a desire to get maintenance?—In the case of desertion I do not know that there ought to be a separation order made at all. It ought to be merely a maintenance order.

4852. That you agree with?—I agree with that, but that is hardly a question of time limit. I think the separation order ought not to be made in a case of desertion.

4853. In cases of cruelty, are there not a number of cases in which the cruelty might be considered trivial and yet wanting some protection, and there might possibly be some hope of amendment?—It may be so: I am not prepared to say there are not.

4854. Do you think it desirable to give the magistrate a discretion whether he should make a permanent order for separation or make it temporary with an obligation to come again?—I think you might give him a discretion, certainly.

4855. Does that exhaust what you wish to say about separation?—I think so.

4856. You do not like separation orders?—I do not like them, but I think they are necessary.

4857. You suggest if divorces could be obtained more readily as regards expense and opportunity, if there were some changes, that would be more satisfactory than separation orders?—I think so.

4858. With regard to the publication of reports, have you any views about that you wish to express?—No, I have not any very strong views, but I did see it suggested by some witness—I forget who it was—that, in the event of a newspaper transgressing the rules with regard to the publication of indecent details, it should be liable to be dealt with summarily by the divorce judge.

4859. You have not a more decided view: you prefer to leave your view in your evidence-in-chief as it is?—I do.

4860. As to causes of divorce—I do not want mere opinion—I want to know whether the experience you have had leads you to form any view as to an amendment with regard to the causes of divorce?—It is rather difficult to distinguish altogether between what is the result of experience and what is mere opinion, but I think I may safely say this: I think there are certain causes for divorce which ought to be recognised which are not recognised at present; for example, I think a man who is habitually guilty of adultery ought to be liable to be divorced without the necessity of proving cruelty. I think I may say that comes from my experience. It is difficult to distinguish between opinion and experience, but I do think that. I also think that a man who is guilty of consorting with prostitutes is one who ought to be liable to be divorced without the necessity of proving cruelty.

4861. Or desertion?—Or desertion, I mean: or if he has contracted a venereal disease it seems to me that is another ground on which the wife ought to be entitled to a divorce without proving cruelty or desertion. I think the next thing I have said in my proof is a matter of opinion. A single isolated act of adultery ought not, in my opinion, to entitle a wife to a divorce.

4862. That you regard as a matter of opinion on which experience does not teach you at all?—No. I think all that is a question of theory. Then habitual drunkenness I think certainly should be treated as equivalent to cruelty.

4863. What does your experience show you with regard to that? Does it produce great unhappiness and misery?—Yes, in fact, using the word "cruelty" in its widest term, it is cruelty. It makes a woman's life a burden to her, and I think that ought to be the test of whether it is cruelty or not.

4864. You find that a common case?—Yes.

4865. You have some observations to make with regard to desertion?—Yes. I attach a good deal of importance to that. I think the offence of desertion ought to be complete after the lapse of six months instead of two years. The present period is, I think, unnecessarily long, and if this change were made, the necessity for many of the suits for restitution of conjugal rights would be done away with. They are insincere suits, to begin with.

4866. The poor cannot afford to bring them?—No: that is another of those cases in which there is one law for the rich and another for the poor, because in practice, although the well-to-do woman may be able to afford to bring a restitution suit as a preliminary to a divorce and thus shorten the desertion period, in the case of a poor woman it is quite out of the question.

4867. What is your experience as to the effect of women being entirely deserted but being able to prove nothing else except that the man has gone? Do you meet with that class of case?—Yes. I think in the majority of cases if you could afford money to make inquiries you would find the other thing had happened.

4868. Do you get cases of men or women disappearing out of the district?—It is very common indeed.

4869. And cannot be traced?—Very common indeed.

4870. Suppose that is so, and they cannot be traced, would you leave the present law as it stands, that the woman or man could only get a decree of judicial separation, or extend the right in such cases after a period to a complete divorce?—It is a very difficult question, because it opens all sorts of matters. One's off-hand impulse is to say, "Give the divorce." I think one ought to take care. Divorce is not a mere contract between two parties; you might say there is a third party to the contract, and that is the State or Society. I am not prepared to say whether I think it ought to be a ground for divorce after a considerable period or not. I think it is too difficult a question.

4871. The last note on your proof is as to persistent refusal to allow marital intercourse?—That is not based on my experience amongst the poor, but I have had some experience of divorce cases in the High Court myself.

4872. You practise in the Divorce Court as well?—Occasionally. I am not one of the regular practitioners in that court, but I go there occasionally, and I have had experience in divorce suits, and I think that is a tolerably common thing.

4873. What is your remedy?—I think it ought to be a ground for nullity, persistent refusal.

4874. Without it being necessary to prove physical impediment?—Yes.

4875. You have met with those cases?—Yes, I have. I have a great many friends in the Divorce Court, too.

4876. I daresay you know in practice the refusal is treated as evidence from which possibly an inference might be drawn of impotence?—I know it is, but in practice I prefer to put it on the broad ground: I do not like subterfuges when you can get it by direct means.

4877. I think that exhausts your proof unless there is anything else you wish to mention?—There are several things which in a sense I cannot help having an opinion upon, but it is rather difficult, in view of what you have said, to mention them; perhaps I had better leave them alone.

4878. There is one point. Have you had much experience of insanity cases?—Not very much, but I have moved about in the world a good deal myself, and it is the experience one gathers outside the Law Courts, which is of some assistance to one. I should like to say, with regard to the question of insanity, that personally it is one of the questions upon which off-hand one is inclined to say that permanent insanity ought to be a ground for dissolving the marriage: but, when you come to think of it, there are very many difficulties about it. First of all, there are so many kinds of insanity, and so many causes of insanity, and so many degrees of insanity. Then, in my opinion, very much ought to depend upon how long after the marriage it supervenes.

4879. We have had that suggested. Do you mean by that you are inclined, if granted, to limit it to a time after marriage?—Yes; and then I think, if granted at all, it ought to be a ground for nullity rather than divorce.

4880. That is only a question of change of words?—It is, rather; but one thing involves the idea of blame, whereas the other does not; that is all.

4881. You mean nullity from its inception?—Yes.

4882. There may be a child, although insanity of a pronounced character might intervene after two or three years?—As a matter of fact, I do not know whether it strikes people as being practicable, but the suggestion I put forward is that if the insanity supervenes within a certain time after marriage, and it can be proved either that it is permanent or that certain relatives within a certain degree of relationship to the patient have suffered from insanity, and there are no children, it should be a ground for nullity; but if there are children it might be a ground for divorce. It is a very difficult question, but I think one ought primarily to regard insanity as an illness and a misfortune, and it ought not to be lightly regarded as a ground for divorce. It is rather difficult, at any rate when the insanity supervenes some considerable time after marriage, to differentiate between the case of a man who has a wife who is hopelessly insane, and that of a man who has a wife who is hopelessly bedridden with paralysis. It is true the insane person is not capable of performing his or her functions as husband or wife; but you may say the same of many other forms of illness; and insanity is at the worst really only a form of illness. You have again to bear in mind that there are obligations in marriage as well as rights, and you must not concentrate too much upon the rights.

4883. Is there any other point you want to say something upon? It is some time since you made your notes?—I was going to suggest that adultery on the part of the petitioner should only be a discretionary bar to relief in judicial separation, as well as in dissolution suits.

4884. In both?—Yes.

4885. That is to say, there should be a more general discretionary power?—Yes.

4886. Than at present is the case?—Yes; I had in mind the case of Otway *v.* Otway.

4887. That is to say, the guilt of the petitioner should be discretionary, having regard to all the circumstances of the case?—Yes, having regard to all the circumstances of the case.

4888. Not tied by strict rules, as at present?—Yes.

4889. (*Sir George White.*) You spoke of a large number of persons living without the marriage tie as a very common occurrence. Are you speaking from the cases that come before you, or speaking of a general knowledge of the poorer classes?—I have obtained my experience practically solely through advising in these cases. It is not only applicants who themselves are living in that state of life, but from what I hear, and from the information they give me, I gather many others are living in the same condition.

4890. The cases that come before you would be a certain selection of cases from a district?—Yes.

4891. And therefore would not be typical themselves of the whole district?—Possibly not.

4892. It is rather hard to form a judgment of the district by the cases that come before you?—It is always open to that criticism, I quite agree; but at the same time I think I am bound to say the cases come to us from an extraordinary distance, and a very large proportion of the cases that come to us are more than legal cases. They come to one for advice. They may think they are legal difficulties, but in practice they turn out not to be legal questions at all; they are cases in which they want the advice of a man of the world—in a very large proportion of these cases.

4893. With regard to the present existence of the Divorce Court, you feel divorce can scarcely be said to be applicable to the poorer classes?—I said the "poorest classes." There is a wide distinction between the class for whom I am speaking and the well-to-do artizan class, for example.

4894. Do you think it would be in the interest of morality to place these facilities within the reach of the very poorest classes, to allow them to be extended beyond what they are at present?—I do.

4895. Your testimony is confined, I suppose, to the districts of London?—Yes, entirely.

4896. It does not apply to the country at all?—No.

4897. In regard to separation orders, you say you feel no separation orders should be given in cases of desertion?—Yes, that is my suggestion.

4898. Practically, you have the same opinion in regard to divorce, that divorce should not be given in cases of desertion?—I said it was such a very difficult question I would rather not express an opinion upon that in the case of divorce. Excuse me, I said separation orders ought not to be granted on the ground of desertion; but I said maintenance orders ought.

4899. There is a suggestion you offer which I venture to think is a valuable one, that where a maintenance order is granted the husband should pay direct to an official rather than to the wife?—Yes.

4900. I did not gather whether that official should be a police court official or a poor law official?—A police court official is my idea; but I do not know that I should attach very much importance to a detail of that sort, because I have not a strong view it should be a police court official.

4901. (*Mr. Burt.*) I think you said that amongst the poor there is a great disregard for the sanctity of the marriage tie?—That is the impression I have gathered from my own experience at Cambridge House, I must say.

4902. What would you include amongst the very poor; would that be people in casual employment?—Yes, of course—casual labour for the most part.

4903. Are many of them workpeople?—They would all be workpeople of a sort; for the most part, I think it would be casual labour.

4904. I understand from your answer to Sir George White that your experience has been almost entirely confined to London?—That is so.

4905. You said in your opinion a single isolated act of adultery ought not by itself to entitle the wife to a decree?—I have said that. It is a pure matter of opinion.

4906. Would you apply that to the husband as well as to the wife?—Not altogether. It is mere matter of opinion, although I think there is a certain substantial difference between an act of adultery on the part of a man and on the part of a woman. I would say this, that I think there are cases in which a single act of adultery on the part of the wife ought not of necessity to entitle the husband to a decree. I can conceive a good many cases in which it might be a great hardship to brand a woman when she has committed adultery. We know at present the law recognises "conduct conducing" as a discretionary defence; but in all cases where there has been adultery on the part of the wife, and the defence of "conduct conducing" is established, some degree of blame must have been brought home to the husband; but you can conceive of cases where a woman is driven into temptation owing to the pressure of affairs, and in which you cannot fairly say there is blame on the part of the husband, and yet the fault on the part of the wife ought, perhaps, to be passed over. In such cases the court ought to have a discretion in the matter. Let us take the case of a man who has been driven, owing to his poverty, to go abroad, in order to earn a living for his wife and family. He cannot afford to send any money home to his wife. His wife is left at home without means, and she has to fend for herself, and possibly children too, and she is exposed to all sorts of temptations, and during that period she succumbs to temptation. You may say it is hard on the man that he should be expected to live with his wife again after that, but I think that people who enter into the bond of marriage ought to recognise that they are not entitled to claim a divorce for every offence on the part of the other, and I think the court ought to have a discretion to say whether it will grant a divorce in such a case as that which I have put. I should like the judges in many respects to have a wider discretion than they have at present. I think, in some cases, these hard-and-fast rules tend to work a great deal of hardship.

4907. Would that discretion apply both to the case of the guilty husband as well as to the guilty wife?—I think so, certainly.

4908. (*The Earl of Derby.*) I did not quite understand what you meant about three months' desertion instead of two years being a sufficient ground for divorce?—Six months.

4909. Yes, instead of two years. That means it must be coupled with adultery?—That was the idea. At present, in order that a wife can obtain a divorce, she must prove adultery coupled with desertion or cruelty. There are many cases, amongst the well-to-do classes in particular, in which the husband will never commit an act of cruelty against his wife, but he will go away with another woman. As the law stands at present, the wife has either to wait for two years or else start a restitution suit.

4910. You propose to substitute six months for two years?—Yes.

4911. In your experience, surely there must have been many cases where a husband may have been guilty of adultery, and deserted his wife for six months, and yet after that she has taken him back, and they have lived together?—That is perfectly true; condonation ought always to be encouraged, and it applies to every matrimonial offence.

4912. Is she not more likely to take him back within two years than within six months?—That is so, no doubt.

4913. As a matter of fact, would not such a reduction of the time of desertion as you name really make for more divorces than would be the case, if the two years remained?—I think that is so. I think that must be so. In every case in which you recommend an extension of the grounds for divorce you certainly, so far as your recommendations are adopted, make for an increase in the number of divorces.

4914. Do you not think that would be rather a disadvantage? Never mind the better-off people, but the poorer classes. Do you not think it would be wrong for them not to have the longer time in which to come together again?—The hardship of desertion is greater in the case of the poor than the rich.

4915. That is why I thought the longer time to come together again might conduce more to the happiness of the two?—I doubt it. I think there is less likelihood. It is still very much a matter of opinion.

4916. (*The Archbishop of York.*) I think we may take it from what you said just now, in answer to Mr. Burt, that the experience of which you speak has been gained almost entirely among the casual labour class?—I think so. It is a curious nondescript class. When you speak of the very poor, it is difficult to define what they are. They are a particularly helpless class.

4917. We may take it you are not speaking of the artisan or regular working class?—Not of the better-class artisan. As a rule, if any one of that class comes to us, we say, "You are not the class for whom we are intended!"

4918. You would say among the latter class, the working class proper, there was a singularly strong conception of the obligation of the marriage tie?—From all I have heard, I believe that is the case, but I cannot speak from personal experience of that.

4919. You said, speaking of the immorality in the class of which you speak, more often than not the cause was some legal obstacle to marriage?—I think so.

4920. And they come to you for legal advice?—They come to us in difficulties; that is really what it is. When you examine their cases, you cannot call it legal advice in the vast number of cases.

4921. They would not come to you if they were remaining unmarried, because of other reasons. They do not wish to marry?—I do not follow you.

4922. You gave us to infer that the cause of immorality was legal obstacles to marriage?—I think that is so very largely.

4923. I rather suggest that there are many in that class who do not marry because they do not want to marry; they would rather not have the restraints of marriage?—There may be a certain number—of course there are, but I do not think it is so much a question of the restraints of marriage. The woman, as a rule, would prefer to be married, because of the legal hold over her husband.

4924. You interested me by saying you thought that making dissolution of marriage easier would conduce at least to legal morality among that class. Of course, they will marry if marriage is made easier. Is that your point?—Not quite. What I mean is this. If people recognise that the marriage tie is a tie which, once tied, cannot be broken, or practically cannot be broken at all, it is so irksome they defy it, and it brings marriage into contempt and disrepute for that reason. They are driven to defy it.

4925. There are other obstacles to marriage, such as expense, and you are aware often the idea has been entertained of removing the expense and making marriage easier to promote morality. Has that been your experience among these classes?—I cannot say that.

4926. I suggest it would be rather the other way. What would you say as to the effect of making the conditions of dissolution easier for the class you mention, upon the habits and thoughts of the class of which you are not speaking, decent home-keeping, regular working folk?—I do not think I am advocating anything very revolutionary. All I am asserting is, that practically the same facilities should be granted to the poor that the rich possess. The main object of my evidence to-day is to show, as the law stands at present, there is one law for the rich and one for the poor, and I think it is a bad thing, if the law recognises certain grounds for divorce, that it should at the same time refuse to grant the benefits of those laws to a particular class.

4927. May we have it on record as the result of your experience that you think the general sanctity of marriage among the working classes would be promoted by making dissolution easy?—I think so. When you say "making dissolution easy" you must read that in the light of the explanation I have just given.

4928. With regard to the courts, you recommend in London access to the High Court should still be given to the poorer classes?—I think so.

4929. Would not that be making an unfair distinction between the poor who happen to live in London and those who live in the provinces, that the London ones should have the advantage of the expert and special character of the High Court and the other should be debarred?—I do not think they would attach very much importance to that.

4930. I rather suggest a good many would: the men do not see why their divorces should be treated in county courts as if they were matters of less importance than other cases?—Of course, it is possible, but I do not myself think they attach much importance to it.

4931. With regard to separation orders, you are strongly of opinion that the present practice encourages immorality?—I think it does.

4932. Can you direct us to any evidence of that frequent statement?—I am only giving the result of my experience.

4933. Would you say that the number of illegitimate children is any evidence of that being on the increase?—I do not know how far the illegitimacy birth rate is any test of immorality. I doubt whether it is a reliable test.

4934. Would you say there was any evidence in the classes you speak of, of separated wives adopting the unhappy profession of prostitution?—Certainly.

4935. You say there was evidence of that?—Certainly.

4936. Could you give that from your experience, or can it be found?—I should almost have thought it was common knowledge. I cannot think of any individual case if you ask me off-hand.

4937. It is often said there are figures from other towns and other districts which show that very few of the members of that unhappy class are separated wives. Is that so in your experience or not?—I could not say. I do not think there are many actual prostitutes who come to us. The people who come to us are for the most part the struggling poor, and I draw myself a very wide distinction between prostitution and a man and a woman living together not married.

4938. In regard to that latter point, you know better than I do in the case of a maintenance order that the husband can always allege the wife's adultery as a bar to his paying. Have you come across many cases in which the husband has set up that plea?—I do not know that I have.

4939. Is it your experience that a very large number of persons who apply for separation summonses do come together again, as a matter of fact, make it up and resume cohabitation?—I believe there are a very considerable number of them.

4940. Do you follow up many of the cases which come before you?—To some extent, as far as we can, but the machinery at our disposal is not very efficient.

4941. Might not the effect of some of your suggestions be, as Lord Derby suggested, that in these cases there would be permanent separation, whereas in a little time there might have been a return to their former life?—I know such cases occur, and they ought to be encouraged. I gather you are suggesting it would be a good thing to make these orders temporary in character, so that they might be renewed. I do not think it can do much harm if you do. I doubt whether there is good to be derived from it. On the other hand, I think there may be a good many cases in which it is very hard on the woman to compel her to go to the trouble and expense of obtaining a renewal of the order, if the order has been granted on adequate grounds in the first instance. I suspect in a certain number of cases the separation orders have been granted unduly lightly. I think in the last year or two the magistrates have been much more chary about granting them, but I believe when the law was first introduced they were rather apt to grant them somewhat too lightly.

4942. At any rate, as a matter of fact you give your advice, and owing to the large numbers that come to

you, you have not many opportunities of following up their later life?—No.

4943. (*Mrs. Tennant.*) Have you had experience of long sentences of imprisonment?—No. I have no doubt some of my other friends may have had some experiences. Personally, I cannot call to mind any cases of that.

4944. You do not wish to offer any opinion on the question of penal servitude as a ground for divorce?—I should feel inclined myself to say that penal servitude by itself ought not to be a ground, but, coupled with other circumstances, it might be. Supposing a man has been an exemplary husband for many years and commits a crime, say manslaughter, and goes for a long term of penal servitude; I do not think it right to treat that as a matrimonial offence. On the other hand, supposing he has been treating his wife abominably for years past, and it culminates in his going to prison for a long term of years, I think it might possibly be a ground.

4945. It has been put to us by a previous witness that there is a certain advantage in not having a third person between the wife and the husband to collect the sum for maintenance, and the suggested advantage was that they were more apt to come together if the wife had to go to her husband. Do you think there is anything in that argument?—Personally, I am inclined to think not. Of course, it is a point which has never occurred to me before, but I think it might be rather a dangerous experiment if the husband is really a brutal man.

4946. I suggested that to the witness at the time, but I think his point was that the magistrate would probably take into consideration the kind of husband, and that in circumstances in which the husband was likely to do injury to the wife, he would use his discretion and let an officer of the court receive the money?—Yes. I must say I think it is worth consideration. It has come to me as a new suggestion, and I have not had time to consider it. It seems to me worth consideration, certainly.

4947. In your experience, what course does the wife take if left with children to support when the husband does not carry out the maintenance order? Does she seek help from the workhouse or return to an industry if she has had previous industrial experience?—We cannot lay down a rule; it depends so much on the circumstances of the case. I suppose the bulk of them are leading a hard existence, trying to make both ends meet by charing. I should say a larger number are in that position than any other.

4948. Unless they take in home work?—Of course that is so, and in some cases they do go on the parish; there is no doubt about it.

4949. One question upon your own suggestion as to the repeal of the time limit. I suppose the existence of the time limit is to guard the husband against a charge which he might find it difficult to disprove?—Which time limit are you alluding to?

4950. You say on the last page of your proof, "As "the law stands at present, if a wife desire to obtain "a separation order on the ground that her husband "has been guilty of persistent cruelty," or wilful neglect, she must make the application within six months?—Yes; I see what you mean.

4951. I suppose that is meant to protect the husband against a charge made over a very great period?—Yes, there is no doubt that is so, but I think that the magistrate might be safely left to deal with that. At any rate, the London magistrates are men of enormous common sense.

4952. Is it within your experience that people who have lived together without having married would have married at the time if they could afford it, and have afterwards endeavoured to get enough money to marry for the sake of their children?—I think in the class of which I am speaking the question of expense in marriage does not enter their minds. It is a case very often of marry in haste and repent at leisure. I do not think they consider the question of means.

4953. You do not think poverty is ever a bar?—No, I do not think it is.

4954. (*Judge Tindal Atkinson.*) I gather from what you said, supposing the county courts can be so organised as to have time to do the divorce work and to fix special days for it, you think that the county courts would be the proper tribunal?—I think so.

4955. That is a matter of detail?—Yes, subject to this: I do not think it is advisable that you should have a rota of county court judges to travel round, because I think it gives them a special experience of divorce cases. I should feel inclined to confine the rota to a certain limited number of county court judges, not confer the jurisdiction on them all.

4956. Taking the whole of England into consideration, you have not worked out any scheme by which that could be done?—No. I should want a lot of assistance to enable me to do that.

4957. You know that the great difficulty with reference to the working men is the expense of moving their witnesses, and the loss of time to working men who are witnesses?—Yes.

4958. They lose wages and sometimes situations?—Yes.

4959. Therefore, is it not of the utmost importance that the courts where the case is to be tried should be as near as possible to where the suitors live and the witnesses reside?—Certainly.

4960. Is not that provided by the whole of the county court system, in which in every case the parties who are taking advantage of it as a rule reside within six or seven miles of one town?—Yes, I agree.

4961. Therefore, if you extend the centre and make the distance greater, it makes the difficulty greater to these people getting their remedy in the court?—Yes. That underlies the whole of my suggestion that there should be district courts.

4962. As to district courts, I do not know whether you have considered how many district judges would have to be provided for?—I tried to, but I find it is so difficult to form an estimate. So much depends upon how many additional divorce cases you may expect in the course of the year if this change is effected, and you can only make rather wild guesses, it seems to me.

4963. These district judges would require salaries?—Certainly.

4964. And that would make a considerable difference to the expenses of the judicature system?—Of course it would. I do not see it is possible to effect any substantial change without incurring additional expense.

4965. Does your society provide funds?—No; we make a definite rule with regard to that; we are distinctly opposed to it.

4965*a*. (*Mr. Brierley.*) I was rather struck by what you said as to the indifference of the very poor to the marriage tie. You are not speaking of very poor industrious people. Are you simply confining yourself to a certain class of casual and somewhat dissolute people?—No; I do not think it is fair to call the people who come to us "dissolute"; I think they are a very helpless, incompetent lot of people for the most part.

4966. I was surprised to hear you say the very poor regarded with indifference the tie of marriage, and still more surprised to hear that their neighbours did so?—It is my experience. It is possible I have put it too high.

4967. Would you agree, certainly amongst very poor women, that one of the greatest insults that can be put to them is an aspersion on the legality of the union with the man with whom they are living, and the legitimacy of their children?—I think those things go together. You will find that so in practice. There is many a man who would be very insulted at a term of abuse being hurled at him which he really fully deserves.

4968. If you say they have such an indifference to the fact whether they are married or not, would any cheapening of divorce lead them to resort to the courts for the purpose of dissolving their marriage?—I think so. I have very little doubt about it.

4969. Even if some amount of self-sacrifice were demanded from them in the way of money?—Yes; certainly if it were what you might call moderate in relation to their means. I have very little doubt about it.

4970. You do not suggest that the class of whom you are speaking is a large one or representative in any

way of the hard-working poor?—When you say "the "hard-working poor," that is a very vague expression again. I am just speaking of the class I have been trying to describe. It is a very nondescript class, certainly, and I think it is a large one—a very considerable one. It includes all sorts and kinds and conditions of people. The great majority of them are trying to make an honest living, but they are very incompetent for the most part, and a very helpless class.

4971. I understand you to say you have no objection, although you do not see much advantage, in the separation orders on the ground of cruelty or wilful neglect to maintain being made for a certain term?—No; I do not feel very strongly about it.

4972. Do you think that would have a tendency, at all events, to assist reconciliations taking place?—Possibly, it might.

4973. The husband by the end of six months would have had a lesson to some extent of being without a wife, which is a very great punishment to many men, although they may have been cruel?—Yes.

4974. Do you not think it would have a tendency to make reconciliations?—It might; at any rate it is an experiment which might possibly be tried.

4975. With regard to payment to an official, you are aware that no legislation is required for that; there is a provision in the Act?—I know; but I would make it compulsory in all cases.

4976. Would that work well for the wife from the point of view of obtaining her maintenance? If you had the money payable to an official, and made it his duty to recover that money, he would be bound to do so without regard to the circumstances of the man?—He would he bound to make him show cause.

4977. Would not that work badly? A great many of these husbands fall out of work for a time?—Yes.

4978. Sometimes by their own fault, and sometimes without?—Yes.

4979. Do you not find wives are very reasonable during that period of unemployment?—Very reasonable.

4980. They do not press their husbands?—I think they are very reasonable; but there are unreasonable ones.

4981. If you had an official, he would be bound to proceed against the husband without regard to whether he was out of work or not?—He would be bound to summon him to appear and to give an explanation of why he has fallen in arrear; not necessarily send him to prison.

4982. Take the case where a husband after being out of work has got what looks like being a permanent job. Do you not sometimes find a wife comes to you and asks what she is to do under those circumstances? Probably by that time he owes her 5*l.* or 6*l.*, which he can no more pay than fly. Does not the wife ask you what she had better do?—There are many cases of that sort.

4983. Is not the advice this: you are, strictly speaking, entitled to a summons or a warrant, but if you do you will throw him out of his job and he will be out of work another three or four months or more?—Yes.

4984. And the wife does not do so; she gives him time? He has probably paid when in work before, and he goes on paying?—Yes.

4985. If you had an official, he would be bound to summon him or take a warrant for the arrears?—I think the magistrate would give the advice.

4986. But in the meantime the official would be entitled to demand it, and I understand it would be his duty to demand it?—Subject to this. My suggestion is that on first falling into arrear he ought to be summoned.

4987. Sometimes the man cannot pay; he cannot get work, and his wife knows it?—Let him come and say so.

4988. If he is out of work, there is no particular hardship in bringing him to the court; but supposing he has this permanent job; if he is brought to the court he often loses it altogether, and there is another period of unemployment for two or three months?—Of course, there are disadvantages.

4989. I only suggest to you the unelasticity of the procedure you propose would be to the detriment of the wife from the point of view of obtaining her arrears?—There might be cases. I put forward the suggestion with the greatest diffidence, because I think it is very difficult to prescribe. It is easier to put your finger upon evils than it is to suggest remedies.

4990. I do not see why it is more difficult for the woman to ask for a summons or warrant, which she often gets free, than it is for the officer?—One of my objects in making this suggestion was to make the thing unpleasant to the husband in order that it may act with a deterrent effect.

4991. The wife can make herself unpleasant at present, only at present she has the discretion, and I suggest she is the best person to judge of the circumstances?—If the husband recognises that the consequence of a separation order will be unpleasant and inconvenient, he will be less likely to run the risk of having a separation order made against him. I put it forward as a tentative suggestion, and I do not desire to press it unduly.

4992. I did not follow what you meant by the time limit for six months being abolished. Where is the hardship in the present time limit? The application has to be made at present within six months of the time when the wife has been forced to leave her husband. What is the hardship of coming within six months of that time?—There are so many reasons; she may in the first instance have held her hand because, although her husband had left her, she knew she could not get any money out of him.

4993. We are talking of the case where the husband has left, where there is no limit of time. The limit of six months only applies in the case of an aggravated assault and wilful neglect to maintain, whereby the wife has been forced to leave and live separate and no more with her husband?—True.

4994. I do not understand where there is any hardship in asking the wife, if she says she has been obliged to leave her husband owing to those causes, to come for relief within six months?—Let me give a few cases which one can easily call to mind. A husband knocks his wife about; she puts up with it for a considerable time. At last she can bear it no longer; she leaves him, She is a clever woman, and manages to support herself six or eight months by the use of her needle, so that there is no occasion to come on the husband for maintenance or protection, and he has not bothered her meanwhile; but after six months she has an illness and can no longer support herself, and the husband shows signs of being unpleasant. It is a great hardship, that because six months have elapsed she cannot get relief. That is only a sample.

4995. Such a case happens from time to time; but it is not a great thing to ask a wife to come within six months?—I am rather inclined to think it is. It is the best wife, as a rule, who allows the six months to elapse. She may forbear because the husband is out of work. What is the good of going for a separation order so long as he is leaving her alone? Then the time elapses, and he gets into good work and defies her, and says: "Six months have elapsed; I will snap "my fingers at you."

4996. I daresay there may be something in it.

4997. (*Sir George White.*) There is one question I want to ask you out of your evidence given to Mr. Brierley. You are satisfied, I understand it, that a large number of the very poor men and women live together without any conviction of wrongdoing?—Yes.

4998. Is it your experience in a large number of those cases that they are quite as faithful to each other as though they were married?—I certainly think so in a very large number of those cases.

4999. (*Mr. Spender.*) In your experience, are there any considerable number of cases from youthful marriages?—Yes, very considerable. I think it is one of the grave evils. On this occasion we are discussing the question of reform of the divorce laws, but I think it is possible we are beginning at the wrong end of the stick, and we might with advantage consider the way in which the marriage tie is contracted originally very often.

5000. A minor cannot make a binding promise of marriage, but can get married very easily?—Yes.

5001. (*Chairman.*) Do you think they get married very easily?—I think they do, a great many.

5002. I may ask you this, although I do not know that it is strictly within the scope of the Inquiry, and perhaps you have not thought the subject out: is there any reasonable means in England by which you could put a proper check upon marrying too carelessly?—It is very difficult. I think I would rather not on this occasion express an opinion upon it.

5003. I was asking whether you had any remedy?—I certainly have not at present, and my ideas on the subject at present require to be further formulated. I have ideas, but I would rather not express them at present.

5004. You regard improvident marriages as productive of a great deal of disaster?—Indeed I do.

5005. Assuming desertion to be one of the grounds for getting a decree of divorce, coupled with adultery against the husband, your suggestion was to reduce the time of two years to six months?—Yes.

5006. You answered Earl Derby on some questions about that. The better class of people who can afford it can at once institute a restitution suit?—Precisely.

5007. And within a month or two get a decree of restitution, which has the effect, if not obeyed, of making desertion run as if two years had elapsed?—Precisely.

5008. Your point with regard to the poor is that hey cannot afford the restitution suit?—Precisely.

5009. So you would reduce the time to meet cases of that character?—Precisely.

5010. One point on the separation orders. Have you met with cases in which after the order has been made the husband has applied to rescind it on the ground of the wife's adultery?—I cannot call to mind any cases, but such cases I know occur.

5011. I ask you because we have had those cases sometimes even in the Probate Court; I do not know why they came there?—I know those cases occur.

5012. And the order is rescinded?—Yes.

5013. Probably the magistrates will tell us more about that?—Yes.

5014. You were asked some question about illegitimacy statistics, and you used the expression "doubtful" in connection with those?—Yes.

5015. What were you referring to?—I do not remember the expression. I said I did not regard illegitimacy statistics as a safe test of the amount of immorality.

5016. Will you tell us why?—I think there are many ways of avoiding conception, to begin with.

5017. Is that, in your experience, a common thing nowadays?—I think so. That is a question I do not see how anyone can speak of positively. You cannot question people on those subjects.

5018. You believe it exists?—Undoubtedly. You see all these small shops in the poorer parts full of these appliances.

5019. (*The Archbishop of York.*) Would you say that was true among the class we have been specially speaking of?—One can only conjecture.

5020. (*Chairman.*) I only wanted to know, when you used that expression "doubtful," what it was you were referring to, because it might not explain itself in the course of your evidence. Is there anything else besides that?—I do not know. I have not considered illegitimacy statistics very fully. My answer was rather on the spur of the moment. I have not gone into it very fully.

(*Chairman.*) It is only to make your evidence clear. I think I ought to say, on behalf of the Commissioners, that we are very much indebted to you for your evidence.

Mr. WILLIAM G. RAMSAY FAIRFAX called and examined.

5021. (*Chairman.*) What is your profession?—I am a lieutenant of the Royal Navy, now on the Emergency List. I served in the Royal Navy some ten years. I have since travelled abroad, and now have a business in the City.

5022. As what?—I do a good deal in patents.

5023. Are you president of the Divorce Law Reform Union?—I am.

5024. Is that a matter you have made the subject of considerable study?—It is.

5025. I mean the law of divorce?—Yes.

5026. I have read with great care your proof. I think we may take it rather shorter than it stands, because we have had so much of the material placed before us. I would rather get the summary of your view based on the material than read through the detail. I daresay you appreciate that?—Quite.

5027. With regard to the cost, the inference you draw from the cost of obtaining divorce is that it is not of so much use to the majority of the poor?—No, the cost, I think, debars the poor.

5028. You regard the difficulties that have been mentioned by you as being indicative of the practical impossibility of bringing very poor suits?—Yes.

5029. Do you infer anything from the statistics that 35 suits were instituted *in formâ pauperis* for 1907 against the large number of separation orders?—Yes. I think it proves conclusively that the poor are denied justice if there are 7,000 separation orders granted a year, and only 35 suits brought *in formâ pauperis*.

5030. You infer from that there are cases in which there may be ground for a divorce which they would go for if they could maintain the suit at less expense?—Yes.

5031. That is the substance of it?—Yes.

5032. You think an *in formâ pauperis* suit does not achieve the object which should be attained?—No.

5033. You regard the separation orders as an evil consequence?—I do.

5034. Will you tell us on what ground you say so?—I think permanent separation without the power of re-marriage must be productive of immorality in one form or another.

5035. Are you speaking for your Union?—No. These are my own personal views. I am not necessarily expressing the views of every member of my Union.

5036. Are you representative here, or not?—The honorary secretary is also attending.

5037. Do you express, generally speaking, the views of your Union, or only your own?—I should imagine I am expressing the general views of my Union, but I should not like to commit myself to their view or commit them to my view.

5038. You would not like to commit every member to your view?—No.

5039. Will you tell us shortly the grounds on which you suggest those separation orders are bad?—I think the principal ground is that they do not permit the parties to re-marry.

5040. You think that leads to immorality?—Yes; I do not think there can be any doubt about it. Then, again, a separation order punishes the innocent for the sins of the guilty.

5041. Why?—If we consider the case of a separated wife, a wife who has obtained a separation order against her husband who has deserted her or ill-treated her, she is left in the position that she is neither widow, wife nor maid, and is looked upon with suspicion from all sides for the mere fact that she is a separated woman. She has all the disadvantages of matrimony, with none of its advantages, and, moreover, is denied all prospect of realising happiness in a more fortunate alliance. The payment of any maintenance which she may be legally entitled to receive from her husband may be easily evaded by him, and whilst he may go abroad and contract a fresh alliance elsewhere, she remains legally tied to him, probably for life. Then take the case of a man, who, in the interests of his children and of the decency of his home, is forced to obtain a separation order against his wife, on the grounds of her chronic drunkenness. To many of such men a wife is not a luxury, but almost an indispensable

human factor in the proper existence and upbringing of their families. Yet, as the law stands, such a man is denied his freedom for all time, unless he be released by the death of his wife or he be able to prove misconduct against her.

5042. That is only in the case of drunkenness. You mean he is left tied without the possibility of forming a new home?—Exactly.

5043. Going to the next point, you have taken the statistics for the last 10 years under the Summary Jurisdiction Act, 1895, and the Licensing Act, 1892, and you find altogether in those years from 1895 up to the end of 1907 there were 79,695 separation orders?—Yes. If that average is maintained up to the end of the present year, it will come to approximately 100,000 separation orders.

5044. In 15 years?—Yes.

5045. We have not had the total put before us before, and therefore I brought it out from your proof. You think that those orders are largely productive of immorality?—Yes. I do not think there can be any doubt about it myself.

5046. Your view would be the same even though in a large number of cases they returned together?—Yes, for I believe in a large number of cases they return only to separate again.

5047. Another point I get from your proof is this. You have taken the 70th Report of the Registrar-General for births, marriages and deaths for 1907, and you find 644 decrees of divorce were granted?—Yes.

5048. And 636 divorced persons re-married?—Yes.

5049. What is the inference you seek to draw from that? Those figures have not been before us yet?—The deduction I draw is this. It may be assumed that the numerical proportion of 50 per cent. of those whose marriages are dissolved re-marry. My opinion is that a separation order, or separation by private deed or in the High Court, to all intents and purposes dissolves a marriage quite as effectively as a divorce does.

5050. Practically, you mean?—Practically, in the majority of cases. You have the people set apart by the separation order, which to all intents and purposes is a divorce; therefore, it is only reasonable to assume that you have a desire to re-marry existing amongst those persons to the same extent as exists amongst persons whose marriages are dissolved by a decree of divorce.

5051. You would expect to find if they had the opportunity 50 per cent. of separated people would be found re-marrying; that is the point?—Yes.

5052. If they had the grant of a divorce decree instead of a separation order?—Exactly.

5053. I think we have dealt with all the other points on that page. Have you any ground for the next point you make in your proof, that a woman's right to divorce should be the same as her husband?—Yes. One point I should like especially to mention is that one of the functions of our legislation is to set up a standard of conduct. Owing to the fact that a wife cannot get a divorce on the grounds of her husband's misconduct, our legislation may be said almost to encourage immorality amongst men.

5054. Will you amplify what you wish to say about that, because I want to follow the argument?—According to the existing legislation, although a single instance of a wife's misconduct is a good cause for divorce on the part of a husband, a wife must prove not only her husband's misconduct, but his misconduct combined with either his cruelty or desertion to obtain relief. Such legislation permits a wife to be subjected to the open and continued adultery of her husband?—On no reasonable grounds can it be shown that that which is considered the gravest offence against the marriage tie on the part of a wife is one which, on the part of a husband, is of no consequence. It may be urged that if similar rights in the matter of divorce on the grounds of adultery were allowed to a wife as to a husband, man's nature is such that the institution of marriage could not be preserved. I have heard it advanced that if wives were allowed to obtain divorce against their husbands on the ground of misconduct you would absolutely get the courts flooded with divorce proceedings. I do not think that is true.

5045. You then refer to Scottish statistics?—Yes.

5056. Can you tell us what you have taken those from?—You will find them in the Judicial Statistics for Scotland for 1908.

5057. We will get them. What do they show?—In Scotland adultery is a good cause for divorce on the part of either husband or wife. The conditions there nearly assimilate our own.

5058. The social state, you mean?—I mean the temperament of the people is very similar, and we find in Scotland only 50 divorces were applied for by wives on this ground in 1908.

5059. How many decrees were made during that time?—I think approximately 400.

5060. How many decrees granted in the 50 cases? You say there were 50 applications?—Almost the same amount. I speak from memory because I have not a note of it, but as far as my memory serves me it is practically the same number.

5051. That is in face of the fact that in Scotland the expense is not so material?—Exactly.

5062. Can you tell me what the total amount of suits by wives for desertion was?—You can find it in the statistics, but I have not them with me at the moment.

5063. That is one of your main grounds for inferring that it would not be improperly taken advantage of if the adulterous act of a man alone were made a ground of divorce?—Quite.

5064. You suggest there may be abuse of the existing laws?—Yes.

5065. I want to understand what the suggestion made there is?—What I mean to convey is this: supposing a wife is in a position to prove misconduct and either cruelty or desertion on the part of her husband, she has it in her power to apply for either a judicial separation or a divorce. A judicial separation is a far graver punishment to the husband than a divorce, therefore the wife has it in her power to condemn her husband to the graver punishment when, in reality, she may just as well go for divorce.

5066. Would you allow the respondent in such cases to demand the full decree?—Yes.

5067. And not leave it to the option of the petitioner to select?—Exactly.

5068. With regard to the question of insanity and divorce, have you taken out the figures given in the Lunacy Commissioners Reports?—Yes.

5069. For what year is that?—I quote several of them.

5070. Will you give me the proper title of those?—The Reports of the Commissioners in Lunacy.

5071. For 1909?—Yes; it is called the 63rd Report of the Commissioners in Lunacy.

5073. Issued on the 1st January of this last year: that would be for the year before?—I am not sure of the date of issue, but the 63rd Report is, I believe, the latest, and it gives the numbers of those certified as insane on the 1st January 1909.

5073. Will you give us the figures you have, because we may as well have them at once?—According to the 63rd Report of the Commissioners in Lunacy, on the 1st January 1909 there were 128,787 persons certified as insane in England and Wales.

5074. Does that mean people in asylums of some sort or another?—Yes.

5075. Have you ascertained from the report, or in any other way, how many of those are married persons?—As far as we could get it, approximately 45 per cent. of those persons are married, on which basis it works out at approximately 57,000 insane married persons.

5076. Do the statistics give the ages of those people?—Only approximately.

5077. That means that there are 57,000 people who have a partner tied to them who is in an asylum?—Exactly.

5078. That is what you mean?—That is what I gather from the statistics.

5079. You have taken those from nothing else but the book of statistics?—No, all Government publications.

5080. Do the statistics show what percentage of those in the asylums are for hereditary insanity and

what for produced insanity?—Yes, in some of the books of statistics. In some years they do not give the hereditary insanity, and in other years they do. I forget which report it was, but I think it must be the Report for 1908 which stated that of the admissions in 1907, 22·6 per cent. showed insane heredity.

5081. I suppose that is hereditary?—They call it insane heredity.

5082. Is there an annual increase?—The annual increase in the number of persons certified as insane is 3,000.

5083. From those facts you are drawing an inference that dissolution in cases of insanity should be made?—Yes; I think it is important. Apart from the extreme hardship which is inflicted upon either a young wife or husband, I think these marriages ought to be dissolved for the benefit of posterity. I would draw your attention to the Report of the Royal Commissioners on the Care and Control of the Feeble-Minded, in which they state: "The Royal Commissioners devoted much care and "attention to the causation of mental defect, and "arrived at the conclusion that feeble-mindedness is "largely inherited; that prevention of mentally "defective persons from becoming parents would "tend to diminish the numbers of such persons in the "population."

5084. The next point you deal with is a question of adultery being an essential factor in divorce. I am not sure what you suggest by that. I do not want mere argument. I want the grounds upon which views are expressed?—I think it is a very great injustice in some cases that where a marriage is quite impossible, where it has failed in every particular, that the only ground for getting free and getting that marriage dissolved is through the medium of adultery, because it naturally places a premium upon adultery and misconduct.

5085. You mean by that people deliberately committing it in order to get free?—Deliberately committing it in order to get free.

5086. By affording a ground for a case against them?—Exactly.

5087. That is an inference of yours, I take it; it is not a statement on experience?—It is a statement on experience.

5088. A statement made from experience?—Yes.

5089. In what way?—I have known cases of that happening. If I may say so, the danger of it is this: whilst the laws remain in the abominable state they are in now people will look upon an offence committed with that object with comparative levity; they will sympathise with it. In certain cases, owing to the hardships of the existing laws, adultery is coming to be looked upon as merely a test of sincerity on the part of the person desiring to be free.

5090. Those reasons lead you to the suggestion that the grounds should be wider?—Undoubtedly.

5091. Let us understand what those grounds are, according to the view you wish to present?—I advocate that husband and wife should be placed on an equal footing as regards offence and relief; the existing system of permanent legal separation to be abolished; the following to be additional grounds for divorce: adultery on the part of a husband, wilful desertion of two years' standing or upwards, insanity of two years' standing or upwards, chronic alcoholism of two years' standing or upwards, persistent cruelty or aggravated assault, sentence of imprisonment of seven years or upwards.

5092. You put adultery on the part of the husband, but you of course include adultery on the part of the wife, or is it adultery alone on the part of the husband?—I preface that with "additional grounds of divorce."

5093. You think those grounds are not met by the existing legislation?—No.

5094. Is the rest of the proof which you put forward argumentative statements in support of that scheme, or is it based upon any facts or grounds which you wish to draw attention to?—To a very great extent it is based on facts and figures. In section 8 of my proof I have endeavoured to show by figures the evils which arise from the narrowness of the existing laws of divorce.

5095. Will you amplify and give some reasons for your views on the question of adultery being an essential factor in divorce?—I think it is a terrible injustice, where the objects of a marriage are entirely destroyed, that the medium of adultery should be the only method of getting free. Take the case of incurable insanity which has lasted for some considerable time, or any other case: there are many of them. Take the case where drunkenness has broken up a home entirely and made married life altogether impossible. It seems to me a most awful thing that people cannot dissolve that bond except through the medium of adultery. That, I think, leads to all sorts of evils. Pressure is brought to bear on the offending party to divorce the innocent party.

5096. You refer to some statistics about this with regard to the number of unmarried people and legitimate and illegitimate births?—Yes.

5097. Will you tell us what those figures are and the conclusions you draw from them?—First, we can start with the assumption that for various reasons there are a tremendous number of people who are nominally married but are living apart, and who are married in name only. We have to bear in mind those statistics of the Registrar-General, that 50 per cent. of those persons whose marriages are dissolved through the medium of divorce re-marry, and that, therefore, amongst those people whose marriages are in fact dissolved, or rather rendered null and void through insanity, drunkenness, and so on, the desire to re-marry exists.

5098. By "null and void" you mean practically so?—Yes, although not legally so. I have made a reference to Professor Westermark, who is one of the most authoritative writers on the subject of marriage, and he states that the chief factor in the higher relative rate of increase of prostitution over population is occasioned by the growing number of unmarried people, whilst, according to the statistical investigations of Engel and others, quoted by the same author, the fewer marriages the greater number of illegitimate children.

5099. Have you got the reference to Westermark, the title of the book?—It is "The History of Human Marriage," published by Macmillan and Co. in 1901.

5100. You infer from that the denial of the right of re-marriage to large numbers of the population whose marriages have been irrevocably frustrated, is productive of evils similar to those described by Westermark?—Exactly.

5101. You refer to the report of the Registrar-General as to births, deaths, &c.?—In 1907, according to his report, there were 36,189 illegitimate children born in England and Wales. Although there has been a decrease in the numbers of illegitimate children born in preceding years, it should be borne in mind that the illegitimate birth rate per 1,000 has remained practically constant for the last 10 years, it being 40 per 1,000.

5102. And the legitimate birth rate?—For every 1,000 births 40 are illegitimate.

5103. I think you can hardly be expressing yourself correctly——

(*Mr. Brierley.*) He means 4 per cent.

5104. (*Chairman.*) Although this number, that is the illegitimate births, shows a slight decrease on the annual number of illegitimate births in preceding years, the proportion of illegitimate births to legitimate births has remained practically constant at 40 per 1,000 during the past 10 years, whilst the proportion of these births in 1907 was slightly higher than the average for the five years 1900–4?—Yes.

5105. What is it you draw from that?—That the existing marriage laws, which ought to control the sexual morality, if I may say so, of the community, absolutely fail in this respect; otherwise we ought to get a decreasing illegitimacy birth rate, I mean proportionally per 1,000. I do not think it is necessary—it rather goes outside the scope of the Inquiry—to point out the evils of illegitimacy itself, but there is one point I may call attention to, that the death rate per 1,000 of these children under one year of age is exactly double that of the death rate amongst legitimate children.

5106. They are not so properly cared for?—They are not so properly cared for, except in the case of infectious diseases, where Society takes very good care to look after itself.

5107. Your conclusion is that there are grounds, and strong grounds, for assuming that lack of reasonable facilities for obtaining divorce is a strong contributory factor in this deplorable birth rate?—A strong contributory factor.

5108. In the illegitimate birth rates?—Quite so. Further, these figures do not represent the real extent of the evil, for they only classify as illegitimate those children whose mothers are unmarried or widows; therefore, the separated woman who gives birth to a child by another man has not an illegitimate child in a technical sense.

5109. Not in the statistics, no; they do not treat those children as illegitimate?—No, the illegitimate children being children of unmarried women or widows. Technically speaking, I suppose the children to whom they are born in wedlock.

5110. You point out there are further evils which you mention, namely, concubinage, bigamy, and prostitution, and you say lastly—I want to know where you get this from—but not least, an unhealthy public opinion which does not check, if it does not encourage, perjury, collusion, and the evasion of the law by some means or other. Where do you get that statement from, and what are the grounds for it?—Take the case of a man who is deserted by his wife, abolutely deserted by his wife: I have a case in mind to illustrate my point, where the wife went off to America, and there contracted a bigamous marriage. Her husband had absolute proof of it, for he was sent an excerpt from the marriage register of the particular locality, and the clergyman who had performed the service had identified her photograph. Through lack of means, however, and having no knowledge of her subsequent movements, he was not able to prove adultery. That man came from a more or less isolated part of England, up in the north, and all the villagers in his village felt so strongly with him at the injustice inflicted upon him, inasmuch as he could not marry again, that they openly advised him to commit bigamy, and this man said he would, and risk going to prison for it, because he felt he was morally entitled to re-marry under the circumstances. Eventually the last I heard of him was he did manage to prove the adultery and get free.

5111. That would rather lead you to suggesting that a ground of separation alone would be sufficient, or should be sufficient, without proof of anything more?—Exactly. My point is that owing to the harshness of the laws public opinion is created which encourages their violation.

5112. Is that a case you know of your own kouwledge?—Yes, most decidedly. I have got many cases in mind of people who have been advised by their friends, and respectable friends, to go through the Divorce Court. "It is merely a ten days' wonder, and "everybody will forget all about it," they say.

5113. You pass on to deal with the cases where they are childless?—The point I wish to make there is that very often an argument against reform is advanced on the ground of the children. It should be borne in mind that the separations which are given are to all intents and purposes, as far as the children are concerned, the same as divorces. I mean the children suffer in the same way, in fact. I think in a great many cases if divorce were granted it would be better for the children, because they would have a stepfather or stepmother who would do a good deal to look after them, which would be an advantage. The statistics I called attention to in my proof were those quoted by Westermark, by which it can be seen that most divorces occur in marriages which are sterile, and I have no doubt if the laws of this country were made more reasonable, that the majority of divorce cases would be granted (of course we cannot tell definitely, but I think we have some ground for thinking so in view of the statistics) in families where there were very few children or perhaps no children at all.

5114. You have some notes about America. We are to have some American lawyers about that, and I do not know that we need trouble you, unless there are any facts which you have which you think ought to be drawn to our attention?—I think Mr. Gates, who follows me, has some very strong facts which bear upon that subject. It is very little use my going over the ground twice.

5115. With regard to the general scheme at the end of your proof, you have already stated the latter part, which deals with the causes, and you think that the powers of the High Court should be delegated to county courts where the incomes are small?—I have no technical experience of that, but it seems to me the powers at present vested in the courts in London must be delegated to local courts in some way or other.

5116. You prefer the stipendiary magistrates' powers should be confined to making interim orders?—Yes, pending a divorce absolute being granted, it is necessary to have something to safeguard the wife in the interval.

5117. What is the point about the abolition of the King's Proctor's office?—I cannot see the use of the King's Proctor myself. In Scotland they do not have him. I believe the procedure there is, that the Lord Advocate has a power to intervene if perjury is committed. As a matter of fact, I believe he never does.

5118. We shall have that from the Lord Advocate?—Two or three stiff sentences for perjury would do all the good the King's Proctor could do in 20 years.

5119. I think that deals fully with your proof ——

5120. (*Judge Tindal Atkinson.*) You say there ought to be equality of rights between husband and wife?—Yes, most decidedly I am of that opinion.

5121. Would you say a single act of adultery on the part of the husband should give the wife any ground for divorce?—Most certainly. I think, first of all, the wife is the best judge of the matter.

5122. Supposing there are children, then you place the breaking up of the home in the hands of the wife on a single act?—Yes. There is no obligation on the part of the wife to do it.

5123. You place it in her power?—Most decidedly.

5124. (*The Archbishop of York.*) You say you are the president of the Divorce Law Reform Union?—The chairman.

5125. Has that been a long existing union?—About four years.

5126. Is it composed of a large number of persons?—A considerable number.

5127. Could you give any indication of the numbers?—The honorary secretary follows me, and I think it would be going over the ground twice. He is more competent to deal with that side of the subject than I am.

5128. Does it contain any of the working classes?—Numbers.

5129. All through in your proof I notice you use the words "it may be reasonably assumed"; for instance: "it may be reasonably assumed, in regard to "separation orders, that a large proportion are legally "entitled to obtain divorce decrees." Have you any evidence of that beyond what you infer?—Yes; the cases that we have had through our office absolutely bear that out.

5130. How do they come through your office?—People write to us wishing to join and bring their cases before the public.

5131. You mean hard cases?—Yes.

5132. (*Sir Lewis Dibdin.*) What does the witness mean by "bear that out"?—The inference is that in a large number of cases.

5133. (*The Archbishop of York.*) A large proportion of the applications for separation orders were cases where the parties were legally entitled to obtain divorce. You think that 7,000 separation orders are an index of the number of potential divorces?—I would not say that in each of those 7,000 cases there were absolute grounds for divorce, but there are some grounds for thinking it was so in a considerable proportion of them; in fact, we have evidence.

5134. You say there have been granted up to the end of 1907, 79,695 separation orders, and you infer that by now there will have been granted approximately 100,000 of such orders, which are equivalent to divorce

decrees for every purpose of immorality. Are not a very considerable number of these separation orders followed by cohabitation and resumption of married life?—There are no figures to show how many of those cases come together again, but a very considerable proportion of those do not come together again.

5135. You say 100,000 are equivalent to divorce decrees for every purpose of immorality?—I say approximately 100,000.

5136. In other words, there is not much strictness to be attached to the figures?—I should say that in the majority of those cases, even of those people who come together again, there are probably good grounds for divorce, that they have committed misconduct in the interval.

5137. You have not taken that element into calculation?—No; it is impossible to do that, I think.

5138. Similarly, at the bottom of the same page, you say that the joint effect of the Acts of 1895 and 1992 up to the end of the current year will have been to place 200,000 persons in a position of potential immorality. Is not that rather strong language to use?—I do not think so, because supposing a man is separated from his wife, knowing what human nature is, I think that in the vast majority of cases those men do not lead a celibate life.

5139. That is your own estimate of human nature, rather than evidence?—My experience of human nature.

5140. (*Mr. Spender.*) You say you would abolish the existing system of permanent separation; would you leave temporary separation?—You would have to permit of temporary separation pending the hearing of a wife's case. If a wife had been badly treated by a drunken husband, in her physical interests you would have to permit of some legal form to separate them, and for her to have a defence against him.

5141. You would leave it in the hands of the police court under the Act of 1895 for those purposes?—Yes.

5142. Would you grant temporary separations for any other reasons than you would grant a divorce for?—I should grant maintenance during desertion.

5143. My point was this: You put down a certain number of cases in which you would expand the divorce law. Would you recognise any other causes as possible causes for temporary separation beyond the causes you have put down for divorce?—No.

5144. Practically it would come to this, that separation in your view would be merely a stage?—It would be merely a stage in getting a divorce, and it would have a two-fold object, that, if the people wished, they need not go on and get a divorce. It would not be an irrevocable step.

5145. In a case of wilful desertion of two years' standing or upwards you would contemplate a period of separation for those two years?—Yes.

Mr. RICHARD THOMAS GATES called and examined.

5146. (*Chairman.*) What is your occupation apart from what I am going to ask you about as Secretary of the Divorce Law Reform Union?—That is rather difficult to say. I might say I am an expert in company matters. I am really in the City, and I deal with all kinds of financial propositions, and perhaps I should also mention that I am an Honorary Lieutenant in the Army.

5147. You are honorary secretary of the Divorce Law Reform Union and have held that position since the foundation of the society in May 1906?—Yes.

5148. You have taken that up as a matter in which you are interested?—Yes, from that point of view.

5149. I will not take you all through this long proof which you have been good enough to give us, because much of it is either argument or quotation. There are, however, some points I would like to get from you in particular. First of all the society's object is, I suppose I may state it shortly, to get an improvement in the law?—Yes. Its real object was to press for the appointment of a Royal Commission with a view to investigating the law.

5150. Now you have got your Royal Commission?—Yes, and practically speaking the object of the society is at an end.

5151. Its object is now at an end?—Yes, the whole of the object was to press for the appointment of a Royal Commission.

5152. That must have been because you and those acting with you thought some enquiry was necessary?—Yes, we were of opinion that the law was unsatisfactory.

5153. There is no other society having the same object?—No, I have no knowledge of another society.

5154. Your evidence is, I think, personal?—Yes.

5155. Although you represent generally the views of the society?—I generally represent the views of my society, but I should like to say I do not think every member should be tied by any statements I make here.

5156. What is the number of members?—I should think, approximately, about 300 or 400, but I have not totalled them up.

5157. You have given us the names of some persons of position who are supporters?—Yes.

5158. In addition to those, have you as members men or women, I do not know whether it has both, from the lower classes?—Yes, we have, but of course you can understand, as I have set forth in my proof, that you will not get a great number of people to send you the facts of their matrimonial troubles. They do not care to place strangers in possession of the facts, and therefore, you will not get a very large number of persons sending them to you, but I shall bring forward some cases from those persons.

5159. Those names you have given us are well-known people?—Yes.

5160. If you will allow me to say so, I do not think it is any use reading through what you say here about the state of things in 1857, and the Act of 1857, and any discussions upon it, because we can read those in books for ourselves?—Then we can pass over that.

5161. The early part of your proof consists of quotations from various speeches and we can refer to them if we like?—I do not think it is necessary to do that in view of the evidence which has been given. I put it in as a comparison.

5162. I think we have had most of what you say in one form or another. Then you come to some statistics which you have taken the trouble to extract from the Civil Judicial Statistics, with the object of drawing some inference from them?—Yes.

5163. Those appear on the third page of your proof and those are the statistics which show the number of marriages dissolved and the other suits tried?—Yes.

5164. We have got the figures for the year 1907 in the tables. What is the conclusion you wish us to draw from those figures?—I put those in to show the actual cost of divorce, but as that has been dealt with, we can pass it over.

5165. Do you mean that table also shows the total costs allowed?—Yes. That is the calculation I have made myself. I find that on page 105 of the report to which we are referring now, the report of the Civil Judicial Statistics, by Sir John Macdonell, the number of bills of costs taxed in 1907 was 491, that is out of a total number of 729 cases. 729 cases were brought, and 491 were taxed, and the costs amounted to a total of 40,590*l.* 0*s.* 2*d.*, which, with an additional 7,781*l.* for court fees and fees on taxation, make a total of 48,371*l.* 16*s.* 3*d.*, and which, as I am only dealing with the taxed costs allowed in 491 cases, gives an average of 66*l.* for 729 suits tried. Then I have deducted 16*l.* per suit from the 576 undefended cases, and if that 16*l.* is added to the cost of 153 defended cases, you get an average of 121*l.* for every defended case and 50*l.* for every undefended case.

5166. That is to say, from the calculations you draw the conclusion that the undefended cases have cost on an average 50*l.* a piece?—Yes, that is conclusively proved from my own calculations.

5167. That is a little more than the table put before us shows. You come to an average of 121*l.* for each defended case?—Yes, I am taking but 491 cases. I am

only taking the cases that are actually taxed in which costs are allowed.

5168. The rest of your point upon that is that that sum of 50*l.* for each undefended case is out of the reach of the poor?—Absolutely.

5169. Now, will you pass on to the statistics which you have got of cases which bear directly on the position of the poorer classes. I understand you have a large collection?—Yes, I have a number of cases here, but I have set them out under different headings.

5170. Have we them set out?—As I come to the various causes and cases, so I have set them out.

5171. Will you kindly take your own course and give us the results in the shortest possible way?—I will give you a few as they come here.

5172. What paper of yours will this be upon?—You will find it upon page 4 of my proof.

5173. I daresay we can follow it quite well if you will read the paper. Will you tell us in your own way what statistics you have got, and what points they bear upon, and what you consider they actually show?—I have such a number I cannot remember every case. I will go through a few of the cases, and they will show you the various points.

5174. Will you do it in your own way?—Before going to that, I should like to draw your attention to some statistics which you have passed over. They are the statistics for the 25 years from 1883 to 1907, which show that during that time there were filed 15,505 petitions for dissolution, and 2,626 petitions for judicial separation, whilst for the same period there were only 812 petitions filed for leave to sue or defend *in formâ pauperis*. That shows you the law is out of the reach of the poor person.

5175. Are those figures taken from the judicial statistics?—Yes.

5176. For how many years?—For 25 years.

5177. Will you repeat it; I did not quite appreciate the materiality of what you were saying?—For the 25 years, from 1883 to 1907, these statistics show that during that time there were filed 15,505 petitions for dissolution, and 2,626 petitions for judicial separation. Of course, those would be High Court cases. For the same period there were only 812 petitions filed for leave to sue or defend *in formâ pauperis*, which shows that the poor person does not come to the High Court even *in formâ pauperis*.

5178. Am I passing on too far when I ask you to proceed with the individual cases?—No, I will read one or two to you.

5179. Will you tell us, first of all, what point the observations are upon?—The cases I propose to bring before you now, simply deal with prohibitive cost, although there may be other points which will crop up, to which I should like to draw your attention. I have the original of the letters here.

5180. Before you come to the letters, are these letters which have been communicated to your union?—These are letters which have been communicated to my union, and which have had nothing private attached to them, and they may be used in any way. I shall not, of course, read the persons' names. They are only excerpts I have taken from the letters and will not contain the whole of the letters. There are a lot of people who write about things that are not relevant.

5181. They are directed to the question of prohibitive cost?—They are entirely upon the question of prohibitive cost, although, as I said before, these letters will show other points. Number one is the case of a very young woman, and she says this: "My age is now "24 years. I got married at 18, having no father or "mother to advise me differently; in six weeks after "marriage my husband commenced to use me in a "most brutal manner without provocation . . . . "I continued to live with him for two years, and had "two children born; I then had to get a separation "order . . . . but he only contributed 5*l.*, and "he has paid nothing since. I have every proof he "has committed adultery, but I am too poor to pay "for divorce proceedings. . . . . Although I am "only now 24, I have to remain tied to this brutal "man the remainder of my life." That shows the effect of separations, and it also shows the effect of what one might call an improvident marriage, and it also shows the effect of brutal treatment and cruelty.

5182. I do not want you to go through them all. Have you many letters, or only a few of that class?—I have had a very large number.

5183. Of which that is a fair type?—That is a poor type compared with some. I will read you one or two more if you will allow me.

5184. We can only get generalities, we cannot go into the detail of all these cases. It is sufficient, I think, as long as you are prepared to say that is typical of a large number of cases?—Yes, that is typical of a large number of cases, and that letter I quoted to you is nothing compared to some of them.

5185. Can you now pass on to another type?—I thought I would deal with that when I came to the various questions as they are dealt with in my proof. When I come to deal with insanity, cruelty, desertion, &c., I have them all set out.

5186. You are still on the question of cost?—Yes.

5187. What do you wish to add?—Mr. Ramsey Fairfax has dealt with the actual number of separation orders that were granted, and he has drawn attention to the fact that 76,695 separation orders were granted since the Act came into force, and, in my opinion, that conclusively proves that there is a demand for divorce among the poorer classes. I have noticed that the question has been put here: "Is there any demand?" I am not in possession of particulars, but I notice that Mr. Pickstone, I think it was, one of the registrars, gave evidence with regard to 44 cases which he selected where adultery had been alleged, either on the part of the wife in applying for the order, or on the part of the husband when he defended the order, or rather made a defence against the order being made. That rather goes to show that this Act ——

5188. Excuse me, but we want your evidence, and not an argument drawn from somebody else's evidence?—I cannot say myself, but I see it has been put in evidence, and I am drawing attention to the fact that 79,695 separation orders had been granted, and it is possible I think, from that, to assume that in a large number of such cases adultery is committed, and that they should be able to get a divorce on those grounds. If I had read more letters you would have found that adultery was alleged in a large number of cases. Shall I proceed now on to the question of the court upon which I think jurisdiction should be conferred as set forth in my proof

5189. If you please?—I have drawn attention to the fact that the 40th section of the Act of 1857 did confer jurisdiction on the assize courts.

5190. That was taken away in 1858?—Yes, and I think the assize courts would be unsuitable, inasmuch as they are not sufficiently local, or held sufficiently often. The courts of summary jurisdiction must also be passed over on several grounds, one of the principal of which is that in the vast majority of such courts, justice is there administered by justices of the peace who have had no legal training, and on this ground alone, cases of such grave importance as the severance of the matrimonial bond should not there be dealt with. These latter remarks do not apply to courts presided over by a stipendiary magistrate, who would doubtless be competent to deal with such cases, and jurisdiction in divorce might be extended to these latter courts, although it is doubtful if it would be advisable that cases of such importance should be dealt with in the same court, together with drunkenness, petty theft, &c., this apart from the important fact that such courts have no jury system.

5191. Is the conclusion you come to that the county court is the proper court to have the jurisdiction?—Personally I am unable to express an opinion upon that. It appears to me, from the study I have made of the question, that they would appear to be the best courts. My reasons for that being they are exceptionally local, are held often, are easily accessible, and are presided over by competent judges.

5192. Then you refer to the report of the County Courts Committee, but we have that, so that I do not think you need trouble with it?—There are one or two points there I should like to mention. The County

Courts Committee made some suggestion, which personally I cannot agree with. I am referring to the committee appointed by the Lord Chancellor. It appears to me that the veto suggested by this committee in regard to the home and near counties is not a good one, and that jurisdiction should be conferred upon such counties, otherwise any person living therein will be placed under a serious disability. The bringing of witnesses to London, and the employment of a local solicitor and his London agent, even if the litigant lives but 20 miles from London, would, I think, in many cases prove a source of injustice, and those affected would have little satisfaction in knowing that if they resided in other counties, they would the better be able to take advantage of the law.

5193. You agree in the main with that report, but you would rather see it extended to the London county courts as well?—I am not so particular about the London county courts. I think it would be just as hard for poor people living 30 miles from London to get a divorce as a person who lived in Northumberland, because they cannot afford to bring their witnesses to London, and I think that committee dealt specially with the home counties. This committee also proposed, at page 25 of the same report, that county courts should only be able to deal with cases in which the petitioner can satisfy the judge that his or her whole assets, after payment of debts, are not worth 50*l.*, and that the joint income of petitioner and respondent are less than 150*l.* per annum. Such a limitation would be inadvisable, inasmuch as there would still remain a very numerous class who would be excluded from obtaining relief. Many quasi-professional persons, small traders and others, whose incomes may perhaps be between 200*l.* and 300*l.* per annum, and who generally have to live up to the full extent of such incomes, would rarely ever be in a position to afford the large sums at present required for a divorce in the High Court. Those are the sums of 121*l.* and 50*l.* respectively which I have drawn your attention to. If, therefore, a limitation in this direction is placed upon local courts, it should only deal with the joint income of parties entitled to sue therein and which should be fixed at a maximum of 500*l.* per annum. I have come to that conclusion from the number of cases I have had from what I may call the lower middle class, persons who really could not afford to bring people to London, witnesses and that sort of thing. They would be probably earning two or three hundred pounds per annum, and I think they would be absolutely excluded if that provision was allowed to stand. That is the class I am endeavouring to legislate for.

5194. Is there any further point upon the county courts to which you wish to refer?—I have made a few points, and there are some suggestions which I think might be useful. They are only suggestions, because I am not a lawyer and know nothing of county court procedure. The rules at present prevailing in the High Court I have been through carefully, and with a little modification they would appear to be applicable to county courts. Then another thing is this, service of a citation, and any subsequent notices, &c., should, as often as possible, be made personally, but where that is not possible, and good cause can be shown, I think, in addition to service by advertisement, which is allowed at the present day, it should also be allowed by registered post. Take the case of a poor man or woman who is living in Cornwall or Sussex. They may have ample evidence for a divorce, but are not able to afford the expense of a personal citation, if the respondent has gone to Scotland and Yorkshire, or some distant place in any other part of the country. Then I think the petitioner, whether husband or wife, should be required to have resided for a period of at least six months within the jurisdiction of any local court to which he or she may present a petition. I should say six months at the least, so that people cannot run out of one county into the other for the ostensible purpose of getting a divorce. Then I think that the rules regarding suits *in formâ pauperis* should be so altered whereby counsel should be retained by each court, to give an opinion whether a person desirous of prosecuting a suit by that method, had reasonable grounds for so proceeding. That would be so that they could say: "You can or cannot proceed in this court." I think that would assist poor persons who have no money. Then I think that powers should be vested in judges to grant either a decree absolute immediately upon a verdict being given which is the Scottish Law, or a decree nisi to be made absolute at the expiration of six months. I think that discretion should lie with the judge. I do not think that the King's Proctor or any other person should be allowed to intervene in any case after a decree nisi had once been granted, the six months intervening between such decree and the decree absolute being ostensibly for the purpose of allowing opportunity of reconciliation or appeal. The present law being unequal causes collusion, and no useful purposes can therefore be served in condemning two persons to live together in a state of mutual distrust and injury. Besides, persons who go to the Divorce Court and obtain a decree nisi, and are thereafter prevented by the King's Proctor from obtaining a decree absolute, are not compelled by such official to live together again, and it is fairly reasonable to assume they never do so, consequently such interference is conducive to bastardy, concubinage, prostitution, and other forms of immorality.

5195. That means you do not think that the misconduct of the petitioner should necessarily be a bar to a decree?—That is my opinion. There is one point which was made this morning which I thought of a long time ago. I think the fees should be kept down as low as possible, and if county courts are granted powers to deal with divorce cases, I think one day should be set on one side for all matrimonial cases to be tried. I do not like the idea of mixing them up with other matters.

5196. Those are all the suggestions you have to make about the county courts?—Yes.

5197. The next point is on the question of separation orders?—Yes. I have dealt with it rather fully under three heads. I presume the historical aspect and the evolution of the law of separation you do not want me to deal with.

5198. No, I think we know that quite well, but I should like to get from you any statistics that you have?—I shall come to the statistics.

5199. I should like any statement of facts you have prepared upon it. Matters of opinion, I think we must decide, more or less, for ourselves. If you have any statistics I should like you to give them to us?—I have brought forward a large number of the laws in relation to separation in other countries.

5200. I think we have had all that?—You would like me to pass over those?

5201. Yes?—I now come to the statistics on separation. It has already been stated that 79,695 separations have taken place since the year 1907, and I have calculated that the actual average for the five years, 1903 to 1907, was 6,959. I have also calculated that if the same average was kept up during the years 1908 and 1909 we should have a further 13,918 separations to add to those already accounted for, which would bring up a total since the Acts of 1895 and 1902 have been in force, of 93,613, which makes 187,226 married citizens who have been separated by the law of this country, and the law has not troubled whether they are brought together again. I have set forth the causes of those separations.

5202. What I wanted is the facts?—There are a number of economical factors which have to be taken into consideration.

5203. What we want is facts?—All these causes are based upon facts which have come to my knowledge. I have some 12 causes, which perhaps one might pass over.

5204. I do not want you to pass over anything which shows the facts, or any statistics which bear upon these questions. The mere fact of the law existing in a certain state we know quite well?—I deal with the five statutory grounds, but there are other grounds besides those. There is a variety of reasons. I think it is sometimes as well to know what is the cause of separation. If you know the cause of a thing

you can sometimes ascertain the effect, and then find out what is the remedy.

5205. Will you give it to us in your own way?—Of course, the direct causes are the five statutory grounds which are dealt with under the Act of 1895, and the statutory ground which is dealt with under the Act of 1902, habitual drunkenness. In addition to those there are adultery, intoxicating liquor, unemployment, poverty, easy facilities at the present day for travelling abroad, improvident marriages, employment of married women, increasing variation among men and women in civilisation, easy facilities for obtaining separation orders, lack of reasonable facilities and reasonable grounds for obtaining a divorce, and the present prohibitive cost of a divorce suit. Those are some of the indirect causes of separation orders being applied for and obtained.

5206. Have you any statistics or facts which show that the difficulty of getting divorce decrees operates to produce what you are referring to?—I have passed over the letters which I have brought with me, in which the facts and causes I have just mentioned are amply illustrated. I gave you one illustration, but there are a large number on the question of prohibitive cost. After going very carefully through the many cases that have come under my notice, I have arrived at the conclusion that the indirect causes I have mentioned are the main factors which cause separation. Now I will pass on to the effect. I can illustrate not only one, but four or five of those causes operating in individual cases, and it may be they finally result in a separation order. I wrote to Mr. George Cadbury in connection with the employment of married women, as I understood he had instituted some inquiries in Birmingham in order to find out whether married people live more happily when the woman was not employed.

5207. I wish you would keep to what I am asking you. You find certain causes are in operation?—Yes.

5208. Have you anything that shows to what extent the present state of the law, either from the difficulty of getting decrees or the difficulty of getting separation orders, is operative to produce the evils to which you have referred?—Yes, I have a large number of statistics which I propose to give you.

5209. Will you give us those?—I will give them as I come to the various causes. I will pass over the causes that are well known. Injustice to men and women is illustrated in regard to the former, that is, injustice to men by the fact that men have hardly any rights at all under the Act of 1895, and, although a wife can obtain a separation if her husband assaults her, he has no such redress unless he proceeds to the High Court and sues for a judicial separation on the ground of cruelty. Further, in many instances a husband who, perhaps, is earning but 1*l.* 10*s.* per week, may be ordered to pay his wife, say, 7*s.* 6*d.* for maintenance (I have cases of this here which I have not read, but I have put it into my proof), and although she may thereafter live a loose life, which he may be well aware of, he is still bound to pay such maintenance, owing to the fact that through having to work hard and long hours, he has neither time nor opportunity to collect evidence to get the order discharged.

5210. That means if a woman has got a separation order from a man, and he finds or hears that she is leading a loose life, he has not the means or the time to get the order discharged?—That is what it means: he has not the time.

5211. As a fact, they do get these orders discharged in certain cases?—Yes.

5212. In others they are not able to for want of means?—I think so; and the result is that the woman goes on her way rejoicing, as it were. I have had that practically put to me by men who have absolutely been affected by it. They have called at my office and explained the whole position to me.

5213. Is your conclusion that that separation order had better have been a divorce at the beginning?—I do not know under those circumstances, but I will come to the question as to whether a separation should be a divorce a little later on, if you do not mind. Another illustration I should like to give is that a husband against whom a maintenance order has been made may fall out of employment; in consequence thereof the payment of maintenance gets in arrears, and the wife, if she is vindictive, can then have him sent to gaol, one effect of which is that the ratepayers suffer by the extra cost upon the rates of having to support a strong, healthy man in prison, and his wife and children outside. I have had a case of a man who has been confined in gaol 21 times.

5214. Under a separation order?—Yes. I have the case of another man who was met at the door of the gaol by his wife, and three days afterwards he was committed by the magistrate again. His sentence was two months, I think. He was hauled up by the magistrate three days after being let out after serving his two months, and sent back for another six weeks. I do not see how that man could possibly support his wife while he is in prison.

5215. You do not believe in the remedy of sending men to prison?—Yes, I do in certain cases, only those men that should be sent to gaol generally run off to America. They get on a cattle ship and away they go and leave their wives. I have a number of cases where a woman has got a warrant against her husband, and he has then disappeared, and one woman sent me a letter in which she said that she had got a letter from San Francisco, in which her husband says, "I warned "you if you took out a warrant you would never get "another cent, and you never will."

5216. Is your experience that separation orders do often lead to the man disappearing altogether?—Invariably, I will not say invariably, but often.

5217. It cannot be invariable, because you have given us a case of a man being sent to prison?—I said invariably at first, but I say "often." I have a statement of one case which I could leave with the Commission, if necessary, which a man swore to, and I think he went to gaol about four times. As soon as he came out they put him in gaol again, and he said he never had a proper chance. How could he pay the arrears when he was in gaol?

5218. Your next defect is bigamy. Do you find that bigamy has been the result of separation orders?—I should not like to say that bigamy had been the effect of separation orders. I have endeavoured to arrive at some conclusion by comparing the various statistics. I find in the 15 years, from 1893 to 1907, that there were no less than 1,615 persons tried in England and Wales for bigamy. I am not able to say the actual number who were convicted, because it does not come out in the statistics. I think judicial separations, separation orders, and private deeds of separation may, in all probability, be responsible for a small part of that. I only say for a small part of that. I do not say for the whole of that, because that would be ridiculous.

5219. You say that there were 1,615 persons tried for bigamy in the 15 years, from 1893 to 1907?—The main grounds are brought about by desertion. There are a good number of cases which illustrate that. A man deserts his wife and goes to the United States of America, or *vice versâ*; the woman deserts her husband and he does not hear any more of her. I had a case sent to me only yesterday; it is a most extraordinary case which I should like to leave with the Commission. A man got married to a woman and had one child by her. It is too long to deal with in detail, but, briefly, it amounts to this. He got married to this woman, had one child by her, and after he had been married 10 years she was convicted of manslaughter. Having been convicted of manslaughter, whilst serving her term of imprisonment he joined the navy and became a chief armourer. After a little while he lost sight of his wife, after she came out of prison, I presume. He did all he could to find out where she was. He advertised for her, and then he got married to another woman. After he had been married a little while his wife turned up, and he was tried at the Winchester Assizes for bigamy and acquitted by the judge. The result is that there are several illegitimate children. It is a most sordid case. There are six or seven illegitimate children. I get rather mixed myself the more I go into it.

5220. Let us get to the result. Is it your view from these cases that separation orders are not a good thing in many cases?—They really are not.

5221. And further, if there were more grounds for divorce you think that these evils might be minimised?—Shall I give statistics with regard to bigamy, and show how it has increased?

5222. I do not think that necessarily helps us?—We will pass over those, then.

5223. I think that deals with your statistics about the separation orders?—There is the illegitimacy to be dealt with yet.

5224. I do not want to go into all the figures about that, except so far as anything which you say shows the operation of these orders?—I think these figures do more or less show it. It has been stated that separation orders do not affect the illegitimacy rate, but the statistics show that they do, at least it could be inferred that they do. From 1876 to 1908 the illegitimate birth rate per 1,000 unmarried and widowed women aged 15 to 45 years has declined in the following proportions, that is, adopting the average rate in the five years 1876 to 1880 as a standard of 100. For the five years from 1876 to 1880, taking the standard of 100, then for the five years from 1881 to 1885 it would be 90; for the five years from 1886 to 1890 it would be 74; for the five years from 1891 to 1895 it would be 68; for the five years from 1896 to 1900 it would be 60; and for the 8 years from 1901 to 1908 it would be 55. That table shows while for the 15 years from 1881 to 1895 the proportion dropped 32, for the 13 years from 1896 to 1908, since the Act of 1895 came into force, the proportion has only fallen 13.

5225. Does that mean this: during the time before the Act of 1895 was in operation there was a rapid decline in the illegitimate birth rate?—Yes, that is what it means.

5226. Since that time the decline has been less rapid?—Yes, it has practically stood still. That is what I am endeavouring to show you. I would like to take it in another way, because I think these figures are very interesting and important. Take the illegitimate birth rate per 1,000 unmarried and widowed women aged 15 to 45 years, that is the only proper way of calculating it; that has from 1876 to 1906 in each tenth year been as follows: in 1876 it was 14·6 per 1,000; in 1886 it was 12·8 per 1,000; in 1896 it was 9·7 per 1,000; and in 1906 it was 8·1 per 1,000.

5227. That is the same thing. There is some decrease from 1886 to 1896, but very little decrease during the remaining ten years?—Yes; it has been practically stationary.

5228. There is a decrease between 1876 and 1886, and a considerable decrease between 1886 and 1896, and a 1·6 decrease between 1896 and 1906?—Yes. I am inclined to think that these separation orders have stopped the decrease in the illegitimacy birth rate. Of course there is the factor that nowadays people restrict the procreation of children to what they used to, the facilities for so doing being much more advanced than they used to be.

5229. Will you just give me the last of these figures, so as to dispose of this point. I see that you have another table at the bottom?—Yes. You mean the table with regard to the judicial separations?

5230. No, I mean the last table on the same page. I want to see what that last table shows?—Yes. That is the proportion of illegitimate births per 1,000 unmarried and widowed women aged 14 to 45 years of age since 1899, from which time we can calculate that separation orders would begin to make an impresions on illegitimacy. The proportions are as follows: in 1899 it was 8·9 per 1,000; in 1900 it was 8·6; in 1901 it was 8·4; in 1902 it was 8·4; in 1903 it was 8·4; in 1904 it was 8·4; in 1905 it was 8·2; in 1906 it was 8·1; in 1907 it was 7·8; and in 1908 it was 8·0.

5231. That shows a more or less steady decrease?—Those figures show that since the Act of 1895 came into force illegitimacy has practically remained steady, whereas before then it was decreasing very rapidly.

5232. What inference do you draw from those figures?—I draw the inference that the Act of 1895, by granting a number of separation orders, is a contributory factor to illegitimacy. I should like to quote some other figures in connection therewith in which the Registrar General shows that the number of illegitimate births in 1908 would have been 67,649 instead of 37,531, if the proportion of unmarried and widowed women of 15 to 45 years had been as fertile in that year as the proportion of similar women were in 1875–1880. Yet in spite of this diminution in fertility, we see that since the Act of 1895 illegitimacy has practically remained stationary.

5233. Then you pass on to the judicial separations What do you say they show?—I think I simply quoted those to commence with the question.

5234. That only shows that the number of judicial separations ——?—Is decreasing, and that the husband does not often apply for a judicial separation in the High Court.

5235. We know that, I think. Does that exhaust the points you have to make upon those figures?—With regard to judicial separation?

5236. Yes?—I think it really does settle all I want to deal with regarding judicial separation.

5237. The next part of the paragraph is chiefly quotations and arguments, and I think we must pass those?—I would like to deal with the question of private deeds of separation, which do not appear to have been dealt with at all. It is a factor that never seems to have been considered in this country.

5238. Are you suggesting that they should be abolished, or what?—I am suggesting that some record should be taken of them. I do not believe other countries allow people to get separated without having some cognizance of what they are doing. In this country at the present time how is one to arrive at a conclusion as to whether or not there is a canker in our midst or something that we do not know of, if we do not know how many people are separated?

5239. Your suggestion is that private deeds should be registered in some way?—That is my suggestion. I have had the opinion of a number of solicitors, and I have made a calculation with regard to it.

5240. Do you mean some calculation as to the number of separation deeds that probably exist?—Yes.

5241. What do you estimate it at?—I have the opinions of a number of well-known solicitors here.

5242. What is the result?—The result is you might expect there might be one private deed of separation drawn up in each year by each solicitor acting, and as there are 16,000 solicitors ——

5243. Cannot you give us the net result?—I can hardly give the net result, because I have had to make a result. One has said one and some not one, but I have come to the conclusion, we may take it, that there are 2,000 private deeds of separation drawn up every year, which may have a similar effect on the women as a magistrate's separation, in the case of Dodd *v.* Dodd, and thereby debar them from obtaining a divorce on the ground of the husband's subsequent adultery. This was illustrated in the case of Balcombe *v.* Balcombe.

5244. Is your suggestion that they should be registered?—My suggestion is that some cognizance should be taken of private deeds of separation, that the State should have an interest in the matter. Then, I have some letters about this.

5245. Have you any further statistics or facts, those are what I want you to deal with?—I have these facts in regard to separation. I have both judicial private deeds and magistrates separations here set out. I will give you one.

5246. Yes?—It is a rather long one. The man says ——

5247. I do not think we want that. Cannot you give us what is the basis of any suggestion you have to deal with on this question of separation? We do not want the details of each case. What is it you say the cases you have got and the number of letters you have show?—The number of letters and the number of cases that have come under my notice conclusively prove that separation really is a most unsatisfactory remedy, and that there ought to be some, what I might

call, way out of it. I do not absolutely want to abolish separation entirely, because I am aware we must have separation, because people will separate even if we have the most stringent laws. But I think, in view of the various facts and cases which had come under my notice, that permanent separation is a most unsatisfactory remedy and should be altered.

5248. That is justified?—More than justified.

5249. By a number of cases that have actually come before your own personal cognizance?—It is more than justified. I can use the words "more than justified."

5250. The next point is suggestions for amendment, but before I go to that are there any other facts that you wish to draw attention to, based on actual communications or experience?—There are a great number of facts, but I cannot remember them all. They are all so mixed up; I have had such a large number. There is drink in some cases, and cruelty in others.

5251. We must really get to some summary. We cannot hear each individual case; the point is what conclusions does all this matter that is brought before you lead you to?—The conclusions with regard to separation lead me to believe that it is necessary to abolish any system that can possibly place any person, man or woman, in the position of being permanently separated from either husband or wife without the power of re-marriage. That is the sum total of the conclusion I have had to arrive at.

5252. You arrived at that after having masses of communication from a variety of people?—Yes, from a variety of people, a variety of circumstances, incidents, and cases.

5253. That means divorce in certain cases?—Yes.

5254. What are the cases which your experience leads you to conclude should be the proper grounds for granting such divorces?—The grounds I have arrived at in which divorce should be granted, I should like to deal with them separately. I will set them forth in bulk now—are penal servitude, wilful or malicious desertion, incurable drunkenness, cruelty, and I think that the sexes should absolutely be placed upon the same basis in regard to being able to obtain a divorce for the offence of adultery.

5255. Did you include insanity as a cause?—Yes, I included insanity. I will deal with a number of figures dealing with that later on. I have some opinions upon that. I have Lord Lindley's opinion, which he sent to me.

5256. We do not want opinions of people we do not see. We want any facts you have got?—I have obtained these opinions before arriving at a conclusion. I have not rushed into it. I have had to get all kinds of facts, figures, and opinions of everybody before I could arrive at the conclusion that certain things shall be. I have tried to substantiate it in every direction.

5257. You said you had some statistics about lunacy. Will you give us those?—May I draw your attention to a table which I have compiled in regard to ——

5258. Have we got it?—I have sent it in. I do not think you will find it in any statistics. It is a very extraordinary table. It deals with the separations granted in various countries.

5259. You would like to put this in as part of your evidence?—Yes, to illustrate that other countries are more chary in granting separations than we are.

Country.	Total Years.	Period.	Annual Average Population.	Total Separations.	Annual Average Separations.	Annual Average per 100,000 Population.
England and Wales, including magistrates' separations and private deeds.	10	1897–1906	32,787,200	87,386	8,738	26·7
France	9	1897–1905	38,771,100	20,042	2,227	5·7
Austria	10	1897–1906	26,291,000	15,350	1,535	6·6
Italy	8	1897–1904	32,380,596	6,513	814	2·5
Holland	10	1897–1906	5,275,800	1,617	162	3·1
Norway	10	1897–1906	2,224,600	1,434	143	6·5
Scotland	9	1898–1906	4,530,222	309	34	*
Ireland	10	1897–1906	4,449,700	42	4	*
Hungary	9	1898–1906	19,213,444	15	1·6	*

* Less than 1 per 100,000 population.

5260. For England and Wales the total separations in 10 years are 87,000 odd. That includes the orders?—The orders, the judicial separations, and my calculation that 2,000 private deeds of separation takes place every year.

5261. That is an annual average of 8,738?—Yes.

5262. You make it out 26·7 per 100,000 of the population?—That is right, in separations.

5263. Will you take any other country you wish to illustrate?—Take France, which grants a large number of separations.

5264. There the annual average is 5·7?—That is in only 9 years. I could only get the figures for 9 years.

5265. It is the annual average?—Yes, 5·7 over 9 years.

5266. Take Holland?—You will find it is only 3·1.

5267. That table shows that the separations are more numerous in this country than in any other country?—Yes, it is most conclusive proof of that.

5268. Does it help to show us anything beyond that?—No; it simply shows other countries do not grant separations at the rate that we do. I can say this: I have not calculated the totals, but if we had the number of separations and divorces in this country, and the number of separations and divorces in other countries, we should find that our divorce and separation rate was considerably more than the divorce and separation rate combined in some of the other countries, although it is said that our divorce rate is very low. The fact is, these permanent separations, which many of them may be, are wiped out of consideration altogether. I am endeavouring to illustrate that.

5269. What do you say is the conclusion we should draw from looking at this table?—The conclusion you should draw from looking at that table is that separations are granted very freely in this country and not in other countries, and it also illustrates that during the period under review there have been granted in England and Wales nearly twice as many separations as in all the other countries put together.

5270. What further conclusion does that lead one to? It may be right or wrong, but it does not carry one any further?—No, it may not, but it is an illustration of the fact that separations are more freely granted in this country than in other countries.

5271. Will you come to the lunacy question?—Shall we pass over the question of how it appears to me the law should be altered in the event of there being no jurisdiction conferred upon any local courts? I have made out some schedules here with regard to that.

5272. What is the point of that?—The point is this, as far as I am concerned. If the county courts are not going to have jurisdiction conferred on them or any other local court—assuming this Commission finds it is not advisable that local courts should have jurisdiction conferred upon them, I have made some suggestions in regard to separations in the event of that being the case.

5273. What are the suggestions?—I have dealt with them separately, and my suggestions are, assuming the jurisdiction in matrimonial cases is not conferred upon local courts, that magistrates' separation orders should—(*a*) after three years' separation be convertible into a decree of absolute divorce upon application of either party, provided always marital relations had not been resumed in the meantime; (*b*) provide that clause (*a*) of section 5 of the Act of 1895, providing that an applicant be no longer bound to cohabit with her husband, should only be inserted in orders where it is absolutely necessary to protect the wife against her husband's cruelty.

5274. We have had that one before?—Then I will strike it out.

5275. No, you need not do that?—And all orders containing such proviso should be made for a period not exceeding one year, to be renewed at the end of that time if so desired by the wife. All that is assuming that there is no alteration in the law of divorce, and that no jurisdiction is conferred on the county courts. We do not want to have the case of Harriman *v.* Harriman again. Then magistrates' separation orders in cases of habitual drunkenness granted under the Act of 1902 should not allow a decree absolute unless the separation had lasted five years, and the person against whom such order had been made had been confined in an inebriates' home for at least two separate terms of one year each or for a term of two years or under; that magistrates' separation orders be granted to a husband whose wife shall have been convicted summarily of an aggravated assault upon him, or whose wife shall have been convicted upon indictment of an assault upon him and sentenced to pay a fine of more than 5*l.*, or to a term of imprisonment exceeding two months, or whose wife shall have deserted him. It means it is placing husband and wife on the same basis as regards police-court separations. This is assuming that there is no alteration whatever made in the law.

5276. Those are suggestions, if there is no alteration, to remedy some of the present difficulties?—At present there are certain difficulties, and that is with a view to remedying them. Then I think judicial separation should, after three years, be convertible into a decree of absolute divorce in like manner as I have suggested for magistrates' orders, that they should be granted for desertion on similar lines to magistrates' separation orders, that is without it being necessary to wait for the period of two years as required by the Act of 1857. That is in order to get over the difficulty of a wife not being able to get a divorce, I mean one separated from her husband. Thus, by striking out the words "without cause for two years and upwards" in section 26 of the Act of 1857, magistrates' separations would no longer bar a woman from subsequently suing for a divorce. Then I think judicial separations should be obtainable in the High Court on the grounds of habitual drunkenness, with similar provisions, as I have suggested, for magistrates' orders. At the present time poor people can get a separation on these grounds, but wealthy persons cannot unless they go to the police court. Then I think private deeds of separation should (*a*) require that a copy of any and every such deed be duly registered either at Somerset House or the principal registry of the High Court by the solicitor engaged in drawing up such document, a penalty to be enforced for non-registration; (*b*) after three years' separation be convertible in like manner as I have suggested for magistrates' orders, the application for a decree absolute in these cases to be made to the High Court; (*c*) *ipso facto* invalidate any clause in any deed likely to prevent either party who subsequently had good grounds for suing for divorce during the three years mentioned in clause (*b*) from so suing. All persons under each class of separation resuming the marital relation should be required to file a declaration thereof either at Somerset House or at some other registry that may appear more convenient, inasmuch as the State would then have cognisance of the number of its married citizens who were at any given time legally living separately from each other, which would seem desirable both on economic and sociological grounds.

5277. That is the point you have already mentioned?—Yes. Then the law relating to divorce in this instance should be extended, as the effect thereof upon separations would be to immediately sweep away many anomalies and much injustice, and it, therefore, appears that (*a*) the law should place the sexes upon an equal footing and enable a woman to obtain a divorce for adultery alone—I make that statement after having seen a large number of cases, of which I will produce one later, and a great deal of the injustice to a wife is often incurred through the law being as it is.

5278. You said you would produce some letter?—I will produce it later when I deal with the question of the equality of the sexes.

5279. Do you think we might have it while you have it in your mind?—I would prefer to take it later. The law should place the sexes upon an equal footing, and enable a woman to obtain a divorce for adultery alone, the result of which would be to dispose of the disabilities which have been illustrated as attaching to both magistrates' and private deeds of separation, and also to decrease the number of judicial separations, although I do not think that is much of a consideration, as they are so small. It might also be advisable to transfer the power of granting separation orders to county courts in those districts where the courts of summary jurisdiction are not presided over by stipendiary magistrates, in which case the applicant for a decree absolute under clause (*b*), that is, the clause as to private deeds of separation, should be allowed to apply to the county court of the district in which such applicant resided. I briefly summarise those facts in my proof and I do not think we need deal with them now.

5280. I think you have gone through all the proofs you have sent me. I do not know whether there is anything else you wish to add?—I am afraid I was rather late in sending down my last proof, but I should like to deal with the question of the publication of reports just briefly, and also with the question of cruelty as a ground for divorce.

5281. Before you pass on to that, I understood that you wanted to give us some letter that bore upon the question of the relationship of the sexes?—I will deal with that when I come to the question of the equality of the sexes, if you do not mind.

5282. I am afraid that I have only just had your further proof. First of all, with regard to the publication of reports, as we have not had this perhaps you will express yourself a little slower?—Yes. I think that the general opinion will be that publicity does more good than harm, although it may be possible that some harm is done by advertising the misdeeds and misconduct of persons concerned in certain sensational cases which are brought into prominence through the publicity afforded through the Divorce Court. If, however, we have a cancerous growth in our midst I see no advantage in closing our eyes to the fact. The argument that the contemplation of abnormal acts suggests the imitation of them to parties whose minds are predisposed in that direction may be quite true, but then it is only such minds as are predisposed that are affected. The contemplation of punishment always acts more or less as a deterrent, and, no doubt, there are numbers of persons at the present day whose moral fibre is not of the strongest, who are deterred from committing various illegal or immoral acts, not by reason of the actual punishment they would receive, but simply on account of the publicity that would be accorded to the case were they to be detected. To be branded in the sight of their friends, relatives, and the world in general as immoral, and so on, is doubtless a great deterrent to such as these, and perhaps to many others. If publicity does not do more good than harm, then all our criminal courts should be closed to the public, inasmuch as it is known that a sensational murder case or suicide to which wide publicity is given in the press may often be followed by other cases of murder and suicide. Although under the French code the reporting of divorce trials in the public press is an offence punishable by a fine of from 100 to 2,000 francs, I do not think it can be asserted, that such being so, the morality of that country compares more favourably

with our own country, or that divorce cases are fewer in consequence. The total number of divorces granted in France for the nine years from 1897 to 1906 were:—Divorces, 82,129; separations, 20,042, making a total of 102,171 persons parted by law. The total number of divorces, judicial separations, magistrates' separations, and private deeds of separation in this country during the same period, and calculating the latter at 2,000 per annum, was as follows:—Divorces, 5,118; judicial separations, 225; magistrates' separations, 60,373, and private deeds, upon my estimate, 18,000, making a total of 83,716. From those figures one might argue that the suppression of reports would make no difference to the divorce rate in England, as also that publicity does act as a deterrent.

5283. Then you go on to deal with some American laws. I do not think we will trouble about those, because we shall have some American advocates here to deal with them. Now, with regard to cruelty, which you have put forward as one of your headings, what have you to say?—First of all I should like to draw your attention to the fact that I read in the "Nineteenth Century" ——

5284. We do not want to trouble about the "Nineteenth Century"?—Very well, I will come on to the question of cruelty.

5285. "Cruelty as a ground for divorce." I gather that is a ground, according to you, for complete dissolution?—Yes.

5286. You say that you have some letters dealing with that with regard to which perhaps you could give us some statement?—Yes. I will just read the very short statement I have in regard to cruelty.

5287. I would rather you answered my question. What is the result of those letters, and what do they show?—Perhaps if I read you one it would be a better illustration, and more eloquent than I can put it: "At the age of 17½ years, at which time I was pupil "teacher at a Church of England National School in "North London, without one restraining hand or "guiding counsel from my father and mother, they "allowed me to marry a man whom they must have "known would curse their girl's life. I have not much "recollection of it all. The first thing I remember "after was the worst of language, and within three "months a blow. . . . He left me always for the "public-house, returning to abuse me after closing time. "That has been my life for 30 years; in fact, there "is nothing to say but that I am being murdered by "a villain. Why have I stayed with him is the question? "First, because I have no money apart from him "if I could obtain a divorce. Secondly, if I go for "a separation he would probably lose his position, and "then he could not pay the allowance granted. Further, "I have five children, sons and daughters, that I should "grieve to hurt by any action of mine; yet I am now "almost on the verge of doing something desperate, "and in face of this I read that if I want to obtain "a separation that a period of five years must elapse "before I am a free woman. This I consider iniquitous. "Have I not already suffered sufficient? He came "home at 5 p.m.; swore terribly. My child and I crept "out of the house to church, after which we walked "the streets, not daring to come home." Then she goes on to say that she is determined to lay it before one of our bishops.

5288. I daresay you have other letters which show that there is a great deal of misery through cruelty?—Yes, that is so.

5289. You think that cruelty should be a complete ground for dissolution?—I do, in cases such as that. There is no object in keeping the people together.

5290. The next point is the equality of the sexes. I think you have dealt with that point sufficiently?—I have statistics from different countries.

5291. I think we have sufficient information. Then with regard to insanity, you said you had some statistics about that?—Yes, but I should like to come on to the question of the equality of the sexes first.

5292. We have had enough of that, if you do not mind my saying so. We want to pass on to the question of insanity?—There is a very interesting point there which I think the Commissioners should know, in regard to domicile, and the equality of the sexes, which illustrates the state of affairs that may happen. I should have liked to have brought that before you.

5293. Will you state shortly what is the point?—The point is this, that a poor woman's husband may misconduct himself, and then come to her and say, "I "shall continue to misconduct myself so long as I see "fit." She says that is opposed to her ideas of morality, and leaves him and resides with her father. Then her husband takes his bag, and takes a trip to the United States of America. After he has been away five years she suddenly one day receives a divorce notice from a lawyer in Pennsylvania, and the lawyer asks her to fill up this form and have it notarially attested. It is a power of attorney in favour of John Brown, in the United States of America, to appear for her in the court of Pennsylvania. What does she know about this? She does not know what to do: she does not know whether it is valid or not. A great majority of the people do not get these, but I know of a case in which one did, and the woman came to me, and I drew her up an agreement, which I made her send out to the United States of America, and by which I made the man declare he was domiciled in America and did not intend to return to reside in England, as also to waive all claims he had upon her and upon the children. If she did not do that, where would she be? In this case I have in mind the man threatened if she did not fill in the form he should serve her with a notice by advertisement, and the result would be that we should have a similar case to Ogden *v.* Ogden, and that the woman would not know whether she was married or not. I did my best for the woman.

5294. We are not travelling outside the English laws in this Inquiry. In order to effect a remedy of that kind it requires an alteration of the laws of the country?—It is an illustration of the fact that if the sexes had been equal she might have been able to get a divorce on the ground of misconduct. It was the fact that she would not stand his continual misconduct which brought about this state of affairs. I am not dealing with the actual domicile.

5295. Will you pass on to the question of insanity? Have you any statistics or facts which deal with that question?—Yes. I have a number, and I will read my proof in this case, if you do not mind, to commence with, in order to give you my idea. The question as to whether divorce should be granted for insanity is one that needs very careful consideration, but from a perusal of the following statistics ——

5296. If this is the abstract, it goes a great deal outside into what you ought not to say, and it gives all sorts of opinions?—I will leave those out.

5297. We only want the statistics?—I will give you the statistics—but from a perusal of the following statistics it would appear on biological, utilitarian, and economic grounds advisable that divorce should in certain cases be granted. In 1859 the number of insane in England and Wales was 36,762, whilst in 1909 the number had increased to 128,787, a total increase of 250·3 per cent., whilst for the same period the general population has increased only 81·6 per cent.; surely a very grave condition of affairs.

5298. That shows that there has been an enormous increase in the number of lunatics in the country, or at any rate a larger number are now being dealt with, but how does that bear upon it being a ground for divorce?—I will endeavour to illustrate that. For the five years from 1901 to 1905 the annual average admissions to asylums for those aged 20 and upwards totalled 20,420, of whom 46·6 per cent. were married. Upon this basis I am able to calculate that there are approximately 50,000 persons married to lunatics who are condemned to either a life of celibacy, concubinage, or to, which is perhaps worse, cohabitation with a partner who has been mentally affected, and which later state may possibly account in no inconsiderable measure for the enormous increase in insanity just referred to. I only consider that it may account for it. In view of this continued increase in the number of insane, the cost to the country of the maintenance of pauper lunatics is a tremendous factor to be considered. On

January 1st, 1909, the total number of pauper lunatics confined in asylums was 91,391, and the maintenance of pauper lunatics in asylums for the half year ending Lady-day 1909 cost the country the enormous sum of 1,231,989*l.* The number of criminal lunatics received into asylums during 1907 was 249, and the total number under detention at the end of that year was 976, of whom no less than 433 were accused of or had committed murder, 404 persons had been detained upwards of 10 years. Surely, in the event of any of these poor creatures being married, their partners should be allowed relief from the matrimonial bond.

5299. Does that exhaust these statistics?—Yes, I think that does.

5300. Then the next point, which you have dealt with already, is habitual drunkenness, and you have expressed your views with regard to that?—I have some more, and I want to deal with the question of lunacy a little closer than this, if I may, because it is a question which needs careful consideration.

5301. Is there anything more to say about it than the fact that there are a large number of people confined in asylums who are married?—There is a large number, and lunacy is increasing.

5302. I think we have had all that?—I have cases where people have been married for 41 years. There is a case where 12 days after marriage one husband went off his head, and for 41 years remained in an asylum, and I think in a case of that kind redress should be given.

5303. May we not assume that there are a very large number of people with whom lunacy has come on at varying periods from the commencement of married life to a lengthy period?—Yes.

5304. That does not alter the proposition?—I want to bring forward these various factors in order to show that apart from the individual itself it might be advisable on the part of the State that a person should, on certain grounds of lunacy, be granted a divorce. At the same time I want to show that it is very important, and that great care should be taken before any lunatics, husband or wife, as the case may be, is granted a divorce, otherwise we should have ——

5305. I think you might assume—we do not want to discuss all this in such elaboration—that if it were made a ground of divorce great care must be taken to see that it is properly carried out?—Very well, I will do that; only I have a case in my mind of a perfectly sane lady who was incarcerated in an asylum, and I have some suggestions I should like to make in the event of the Royal Commission finding or recommending that divorce should be allowed on the ground of insanity. I have some recommendations or suggestions which I thought should be taken into consideration before it was granted.

5306. I think you may assume if it were granted that adequate protection would have to be given to see that it was properly granted. I must pass on now to the next point, habitual drunkenness, because time is really of importance. You have already stated, in your view, that that should be a ground of divorce. Is not that so?—Yes. I think in cases where drunkenness is persistently indulged in by one of the parties to a marriage it should be, and where the whole object of marriage is brought to a standstill a divorce might be, granted.

5307. That would apply to a very great number of cases, you think?—Yes.

5308. Then I believe that you have a lot of letters which will show cases of hardship in which that has been the case?—Yes. I might read one, if you cared. I have the cases here.

5309. Then the next point is wilful desertion, and you also have a number of letters showing cases in which wilful desertion would be a reasonable ground for a divorce?—Excuse me, may I just quote these statistics in regard to habitual drunkenness?

5310. Yes. What are they?—Since the Inebriates Act of 1898 came into force the number of persons tried for the offence of incurable drunkenness had by the year 1907 quintupled, the total number of persons received into inebriates' reformatories in the nine years 1899 to 1907 being no less than 2,769, of whom 439 were men and 2,330 women. In the year 1907 the number of habitual drunkards received into reformatories was 493, of whom 428 were women and 65 men. This is where the point comes in. Of the 65 men received, 55 were committed for a term of three years, 9 for a term of two years, and only one for a term of one year; while of the 428 women no less than 403 were committed for three years, and the remaining 25 for a term of two years, which illustrates that those people were in a very grave condition. The fact that only one out of those persons was committed for a term of one year is very important.

5311. Can you tell me how many were committed for more than one year?—They never commit for five years; they only commit for three years.

5312. This is for drunkenness; I beg your pardon?—They only commit for three years. They can commit for one year or two years, and in only one case was a person committed for one year. In nearly all the other cases they were committed for three years, which shows that those people were not in a fit state to continue the marriage relation, and that their partners were separated for a long period.

5313. Wilful desertion, you think, should be a ground of divorce?—Yes.

5314. Have you a lot of letters which show that?—Yes, I have an exceptional lot of letters, and some of them bring in that point that I mentioned just now, with regard to a husband going abroad, and his wife thinks he is dead and gets married again, and after having got married again her second husband tells her "the other husband is not dead, so I am going to leave you," and the poor woman is in a worse state than when she commenced.

5315. You also make a point that if they are left chargeable on the rates, the rates will be relieved if they got married?—That is only a small factor, but still, it is worthy of consideration if you are going to deal with this subject on every point.

5316. Then you say you will refer to foreign countries granting divorce for wilful desertion, but we have the laws relating to wilful desertion, so that I do not think you need trouble about that. Then the last item is penal servitude. Is that a case which you are maintaining should be a ground for divorce?—I think relief might be granted in cases of over five years, because I think that the offence is quite as great against the partner as it is against the State.

5317. Have you got any figures which show the total number of persons sentenced in 1907 to penal servitude for more than five years?—Yes; the total number of persons sentenced in England and Wales in 1907 to penal servitude for five years and upwards was 233, that is, at assizes, and at quarter sessions 119, making a total of 352; and if you refer to the report on pauperism for 1st January 1909 you will see that there was a very large number of women who were being assisted by the rates whose husbands are marked under the heading of being confined in gaol. I do not see the actual number; I think it does not give it; but no doubt a good number of those would be cases in which a divorce might be granted. Therefore, if those women could get a divorce they might perhaps remarry to the advantage of themselves, their children, if any, and the ratepayers. The law would not compel a woman to sue for a divorce, and if she was fond of her husband she would in all probability never do so.

5318. I think the last points are questions of practice more than anything else. I do not think I need ask you anything further ——

5319. (*Judge Tindal Atkinson.*) I want to know where you get the extracts from the speeches about county courts. You refer to extracts by the Marquess of Lansdowne, the Bishop of Exeter, the Earl of Malmesbury, Lord Redesdale, and Mr. Collins. Were they taken from the Debates?—They are taken from the Hansard Debates. You will find that there are a great number of others, but I have just picked out a few.

5320. (*Sir Lewis Dibdin.*) I understand you suggest if there are three years' separation under a separation deed it should be possible for the parties to go and get

a decree absolute for divorce?—That was assuming the law is not altered.

5321. (*Chairman.*) Assuming that county courts do not have a jurisdiction conferred upon them?—Yes, assuming that the county courts do not have jurisdiction, and that no alteration is made.

5322. (*Sir Lewis Dibdin.*) The effect would be that anybody could get a divorce where husband and wife were tired of one another, or wished to?—No; at the present day the persons go to the court and get a separation which ——

5323. They get a separation by mutual consent. Perhaps I am misunderstanding you. Your proposition is that where there has been a separation under a deed by mutual consent, and three years have elapsed, it would be possible for either party to turn it into a divorce?—Yes, upon application to the court. I see no useful object if in three years people have not come together again, in letting people go about joining up in alliances which they do, and of which I have evidence.

5324. You think that they should be able to get a divorce?—Yes, that they should be entitled to get a divorce, subject to any safeguards which may be found necessary. I do not propose that divorce should be granted right and left. I have looked at it from every point of view, as far as I can.

(*Chairman.*) I must thank you for your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

NINTH DAY.

Wednesday, 9th March 1910.

THE RIGHT HON. LORD GORELL (*Chairman*).

HIS GRACE THE LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
Sir LEWIS T. DIBDIN, D.C.L.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) Before we begin I want to make a short statement which may prevent some difficulty in the future. The Commissioners are receiving, and have received, an immense mass of letters from individuals who present their own individual cases; but it is quite obvious that it is impossible for the Commissioners to deal with individual cases. We are not a court to try those cases, and we can only deal with the matters placed before us on principle. I make this statement so that the people who choose to write to us will not be under the impression that we are going to deal with their individual cases.

Mr. BENJAMIN FOSSETT LOCK called and examined.

5325. You are a barrister-at-law, of Lincoln's Inn, and of the Western Circuit?—Yes.

5326. And honorary secretary of the Selden Society?—Yes.

5327. And a member of the executive committee of the Legal Aid Society?—Yes.

5328. And you were formerly chairman of the Holborn Committee of the Charity Organisation Society?—Yes.

5329. And are joint editor of the "Annual Practice of the Supreme Court"?—I am.

5330. Might I ask one supplementary question; how long have you been called to the Bar?—Since 1873.

5331. You have practised in the Chancery Division, and on the Western Circuit, and the Dorset Sessions?—Yes.

5332. Has your attention been directed, in the various capacities you have filled, to the working of the divorce laws?—Only specially of the divorce laws as chairman of a committee of the Charity Organisation Society. Of course one frequently then came across difficulties through separations between husband and wife; and with regard to divorce proceedings; and mainly because of the absence of divorce proceedings.

5333. And as chairman of the committee of the Charity Organisation Society your attention has been called to it?—Frequently.

5334. Has your experience led you to any conclusion as to the difficulties that exist in these cases?—The difficulties that exist in these cases, no less than in other cases, in the courts, are that it is impossible, owing to the expense, for persons to get divorce proceedings when they are entitled to them.

5335. Persons of limited means?—Persons of small means.

5336. Have you taken an active part yourself in any way to remedy that state of things?—Not in the matter of divorce proceedings, but I have in other proceedings; first, with the defence of poor prisoners, and afterwards in this matter of the general facilities for poor persons in the courts, which of course would include divorce proceedings.

5377. In 1902, as senior member of the Dorset Sessions Bar you inaugurated a scheme for ensuring the defence by counsel gratuitously of all prisoners brought up for trial who could not afford to pay?—Yes, we defended all prisoners for a year.

5338. In reference to that scheme do you put in a copy of the rules made by the Sessions Bar for the purpose of carrying out the scheme?—Yes.

5339. It is headed "Arrangement for Defence of Prisoners"?—Yes.

5340. You need not read it through?—No, it is simply this. We arranged among the counsel who had less work to do to take briefs for the prisoners not defended, and we carried that out for a year. No one objected, though no one was bound to do it, and the scheme worked very smoothly, and, as you will see, we saved many people from imprisonment who would have been imprisoned from their want of knowledge as to how to conduct their cases.

5341. You have contributed an article to "The Times" on the subject?—Yes.

5342. But do not want that article referred to?—I think not.

5343. I may allude to the fact as showing that you had studied the question in reference to this scheme from a historical point of view for the purposes of a Bill?—Yes.

5344. That was carried out for a year, during which no prisoner was tried at those sessions without being defended by counsel?—Without being defended by counsel.

5345. You also hand to me a copy of a lecture by you on Legal Aid for the Poor. I do not know that we want all that, but the suggestions you make perhaps might be condensed by you?—Certainly; they are condensed at page 15.

5346. Of this "Legal Aid for the Poor"?—Yes.

5347. It would be very simple if we might have it on the note in this way; it summarises the scheme under nine heads, I think?—Yes, my Lord, things that appear to me to be really necessary in order to make an effective scheme to enable poor people to enforce their legal rights.

5348. I do not know that I need read it through now. Perhaps you will point out to Mr. Chapple [*the shorthand writer*] the passages and he can copy it into the note after?—Yes.

The following are the proposals referred to:—

(1) To procure the appointment of approved lists (either voluntary or under authority) of counsel and solicitors, to act in rotation or otherwise, with (if required) separate lists to advise on a reasonable cause in the case of plaintiffs.

(2) To abolish or ignore the practice that no counsel or solicitor shall be assigned without his own consent in each case.

(3) To promote rules of professional duty in both branches requiring members to act on these lists (either civil or criminal) for a certain number of years.

(4) To abolish the hard-and-fast 25*l.* limit and substitute insufficiency of means to obtain legal aid, having regard to the nature and probable expense of the proceeding.

(5) To provide a simple and effective machinery for testing the standard of means.

(6) To extend a like machinery to inferior courts.

(7) To procure the appropriation by the Treasury of an effective portion of the old suitor's fund or other money out of which to provide out-of-pocket expenses, subject to recoupment if recovered from the adverse party.

(8) If necessary or desirable, to make similar provision for fees to counsel and solicitors, subject to the like recoupment.

(9) To procure official financial statements and accounts for guidance in the future, and for protection of such a fund.

5349. The basis of it is a scheme by which poor people should be defended?—Should prosecute or defend civil rights

5350. Oh, this is as to civil rights?—Yes. This is another matter. This began after the Poor Prisoners' Defence Act was passed, and then I took up the question of the civil rights for the poor, and this would include and be applicable ——

5351. Would you just state, in a summary way, the main points of it. I may take it, you would like that copy put in?—If your Lordship pleases.

5352. Would you summarise it then?—First, my Lord, it seems to me necessary that poor people, from the first, should have the aid of legal advice as soon as they want it, as to whether they have a reasonable cause of action. It is necessary also that there should be some check upon persons claiming to sue as poor people who can perhaps afford to sue otherwise. That is a matter which the judges, of course, will easily provide for. But I take the precedent of the 18th century, and the Scotch precedent. Lists of counsel and solicitors willing to advise the poor are kept in the courts in Scotland, and they were kept in the Chancery Courts in the 18th century here. Then every applicant suing on the poor roll is referred to them to see that there is a *probabilis causa litigandi*. There must be some power in the court, as there is in the Statute, to assign counsel and solicitors. At present the solicitor and counsel cannot be assigned without their own consent, and there is no provision for enabling poor people to know who would consent. As Lord Justice Romer said in one of his judgments which is referred to in this pamphlet, "It is the duty of a poor man to "look about and find a solicitor." Well, he cannot do it; he does not know where to go. If the courts kept lists, as they do in Scotland, then everybody would know where to go. Then I think it ought to be the duty of the Bar Council and the Law Society to impress upon young barristers and young solicitors the duty—as they do abroad—of acting on those lists for some years. They call it in Germany *pro Deo*. Then you have a hard-and-fast rule of 2*l.*—formerly 5*l.*—and if the person has means beyond 25*l.*, he cannot sue as a poor person. The Poor Prisoners' Defence Act adopted a much more sensible view than that. They left it open to the judges to consider that, simply defining it by the rule that the prisoner should have insufficient means to obtain legal aid. I think that ought to be adopted in all rules of the court. There seems to be a notion in the courts that if a man has 25*l.*, he is bound to spend it on litigation. He has a family, and 25*l.* worth of furniture; he cannot enforce his rights as a poor man until he has reduced his belongings to below 25*l.* I had a case in the Chancery Courts where an old lady was defrauded of a substantial income, and it was stopped, and she could not sue *in formâ pauperis* until just when we got beyond the pleadings, when she was so reduced she had to go to the workhouse, and then we could go on *in formâ pauperis*, and I was willing to go on. But her solicitors did not see their way to provide the out-of-pocket expenses; not unnaturally, for it would have been an expensive action. The lady was left in the workhouse, and the judge spoke to me about it, but nothing could be done because there was no machinery, and the lady died. That impressed the necessity of some reform in this direction upon me. As I say, I should have a machinery to see that persons did not make a wrong use of it; and then you must alsos have a machinery for dealing with inferior courts.

5353. Tell us what that is?—In Scotland you have to get a certificate from the poor inspecter of the district. In other tribunals it is done by professional and other people. In most cases in England where such evidence is required we generally go to a justice of the peace, or minister of religion, as being a satisfactory witness to the facts of poverty; but the society I am representing is prepared to establish a quasi-tribunal, and we have solicitors and counsel who are willing to consider the means and the justice of the case. What we propose is, as you see in the draft rules, that the courts themselves, of every branch, should keep lists of solicitors and counsel who are willing to advise both as to the preliminary proceedings and the *probabilis causa litigandi*, and, we have thought it advisable to say, another list of those who should actually plead. That is a "counsel of perfection" perhaps, but it is done for this reason. It is suggested that counsel and solicitors who promote poor people's causes may want to advertise themselves. Well, what we say is: Very good, they shall not advertise themselves; they shall advertise other people. So we keep two lists, one to advise that it is a good and proper case, and another to carry on the case. That is a counsel of perfection to avoid that suspicion.

5354. Then you proceed to suggest that the Treasury should appropriate out of some moneys the necessary out-of-pocket expenses?—Yes, my Lord. The great difficulty is that, while in a case like the one I mentioned, solicitors and counsel are willing to give their own services, but the solicitors have to pay out-of-pocket expenses, and witnesses may have to be brought from all parts of the country. The case that I referred to related to land in Dorset; the defendant was in Cumberland, and the old lady was in Birmingham, and we should have had to get witnesses from Dorset, Cumberland, and Birmingham. There was a time when the suitor's funds, which, as I mention before in this lecture, amounted to 4,000,000*l.*, were made liable by Lord Cranworth, in 1860, to pay the expenses of persons who were in prison subject to *capias*, for not answering in Chancery. Now *capias* has been abolished. There are no persons in prison who are

definitely under the words of that Act. The fund remained subject to the charge for those persons who were in prison, but now it is free from the charge of all.

5355. What is the amount of the fund?—There was an amount, 400,000*l.*, and there was a further amount of 3,500,000*l.*—4,000,000*l.* in all.

5356. Where does that fund come from?—It came from unclaimed money in Chancery belonging to suitors; it came also from fees unclaimed belonging to suitors, and in old days many of the offices about the Courts had their salaries charged on this fund.

5357. (*The Earl of Derby.*) That is page 9, I think?—Yes.

5358. (*Chairman.*) At any rate, it is a fund which the Treasury holds which nobody has at present claimed?—That is so.

5359. And probably will not claim?—And probably will not claim; it was also subject to a large number of salaries, but most of those offices have been abolished.

5360. (*The Earl of Derby.*) Are you sure there has been no Relief Bill that has been allowed to apply this money towards the reduction of the National Debt?—I daresay there has.

5361. Then it may have disappeared?—It may have disappeared as a separate fund, but the Government has had the money.

5362. (*Chairman.*) Whether it is there or not, I suppose a similar amount of accumulation would generally arise again if moneys are not claimed?—I think not, because it goes over to the Treasury from time to time if it is not claimed, and they are bound to pay it back if it is claimed.

5363. But your point is that the Treasury might, out of money not claimed, provide money for these purposes?—Yes.

5364. If it is absorbed, as time goes on, more money may come in?—Yes.

5365. A provision might be made to use that for poor suitors?—Yes.

5366. Now you have referred to the formation of the Central Legal Aid Society which you mention in your pamplet?—Yes.

5367. And that is formed with Lord Salisbury as president, and Mr. Bousfield, K.C., as chairman of the executive committee?—Yes.

5368. You represent that society here?—Yes.

5369. Have you submitted rules of Court?—Yes.

5370. You might let us have a copy of the rules?—I think you have a copy of the rules, but I am not certain if you have a right copy.

5371. Is there any special point you desire to draw attention to?—They follow generally the lines of my own suggestions. I originally drafted the rules, but this last revise is settled between one of the judges and the chairman of the society, I believe.

5372. They follow out the suggestions of your pamphlet?—Yes, I think so, generally, my Lord. Of course they cannot touch that question of the Treasury, as your Lordship sees.

5373. Now, may I ask you this. Are these rules applicable, or would they be applicable, to divorce proceedings?—Certainly, I think. The scheme would assist there; the principle is exactly the same. The old Rule in the Divorce Court—the 25*l.* limit—was adopted in the Supreme Court when the new rules were made in 1883, and there were some other rules made in the Divorce Court which made it easier for paupers—I think in 1877.

5374. We have heard from Mr. Musgrave, either 25*s.* or 30*s.* a week is now considered a test?—Yes, but there is no rule to that effect.

5375. It is practice?—Yes, that is so. It is easier in the Divorce Court than in other courts.

5376. Then the basis of the scheme is: Solicitor and counsel on lists who will be willing to assist for nothing?—Yes.

5377. Means provided by the Treasury for out-of-pocket expenses?—Yes, subject to recoupment if recovered from the other side. In Scotland that is done.

5378. Lord Salvesen will give us details of the Scotch system. You need not trouble with that?—No,

5379. Now you pass on in your note to special points with regard to local courts and the other courts. Would there be, in your view, any improvement in the present state of things by keeping divorce proceedings only in London?—Very little. There would be a little, of course.

5380. Just expand that, because this is one of the important points we have to consider?—Well, my Lord, in the first place, it is extremely difficult for persons in distant parts of the country to communicate with London. They must go to the registry.

5381. You are aware they must either appear themselves or instruct a solicitor?—Or instruct a solicitor.

5382. To bring proceedings or defend them?—Yes. Of course, if they could get hold of solicitors—but then they must be local solictors in order for them to get hold of them—it would facilitate matters. If there was a list of solicitors, even in London, published all over the country, to whom people could go, it would facilitate matters, but how a person in Northumberland or Yorkshire is to communicate with the registry in London at his own expense before he can do anything I do not know.

5383. Do you think if there were these assigned solicitors it would be necessary for the person in the country to go and see his solicitor in the country?—No, my Lord, we propose there should be assigned solicitors in district registries also.

5384. (*The Earl of Derby.*) How many are there?—I think at least one in every county.

5385. (*Chairman.*) About 40 or 50?—Yes, of the Supreme Court.

5386. Now you see the suggestion on the one side is to keep all the divorce proceedings in London, where they can be properly worked?—Yes.

5387. The other suggestion we have had put before us is to give jurisdiction to local courts, so that they can deal with them as far as persons with limited means are concerned?—Yes.

5388. Now, I want you to tell us whether you think confining it to London would be right, or whether cases should be taken in the country, and the reasons you have for that?—I think it would be right that cases should be taken in the country, and I see no difficulty in it. Perhaps I should say, first, I am in favour of giving them to county courts, and of letting them be tried in any place where the county court judges sit—not selected places, because selected places are sure to be the larger centres of population, which are already congested with bankruptcy matters and Admiralty matters and so on, and the result is that county court judges are overcrowded in these central places and have very little to do in the smaller places; and if parties are domiciled in the local districts, why not try them in the local districts? It is the same judge and it is the proper place. The whole principle of the jurisdiction of the Divorce Court now is that the domicil of marriage should be within the jurisdiction; and if the local cases are in the local jurisdiction they should be tried there. I understand it is said in objection to that, that if you have so many judges trying divorce proceedings you will have 50 or 55 standards of jurisdiction. Now, my Lord, the county court judges try common law jurisdiction, equitable jurisdiction, bankruptcy jurisdiction, special statute jurisdiction, but nobody says there are 55 standards of common law jurisdiction, or equitable jurisdiction, or bankruptcy jurisdiction. They are controlled by the Court of Appeal; if they go wrong the Court of Appeal will correct them. It is the same in the divorce proceedings. Divorce law is less complicated than many of the jurisdictions that the county courts now exercise.

5389. The bankruptcy jurisdiction is very difficult?—Yes, and unlimited.

5390. The same as the High Court?—Yes, and winding up companies, now. With a company of 10,000*l.* of capital you are bound to go to the county court; you cannot go to the High Court.

5391. That is to say, in the winding up of companies?—Yes, if the domicile of the company is within the jurisdiction of the county court and the capital does not exceed 10,000*l.*, you cannot go to the High Court at all.

5392. That is your view as to the tribunal?—Yes.

5393. But it does not still exhaust what I should like you to deal with. The point made is that if you could reduce expense, and possibly deal with it on the footing of your assigned counsel and solicitor's basis, that the divorce work might still come to London?—With regard to that, my Lord, there are Scotch statistics that I think I might refer to. There you can go in either court.

5394. No, not for divorce?—Either the Court of Session or the sheriff's court?

5395. No, the sheriff's court is limited to separations?—Well, I was not talking particularly about the divorce jurisdiction; but I observe that for some years during which Mr. Coldstream collected statistics, the applications for persons to go on the poor roll for the higher court were about 100, while the applications in the sheriff's court to go on the poor roll were about 2,000; so that even where you have this jurisdiction in both cases the vast majority of cases are in the local courts.

5396. We are not talking of what jurisdiction is exercised?—No.

5397. Where the sheriff's court has jurisdiction there are 2,000 cases on the poor roll?—Yes.

5398. Where do you get that from?—That is from a paper read before the International Law Society by Mr. Coldstream.

5399. But where does he take those figures from, because it would be necessary to check them?—This is prepared by Mr. Moncrieff, Superintendent of Judicial Statistics in Scotland. Perhaps your Lordship will let me say this: Mr. Coldstream was a member of our executive committee, and he would have been asked to come before you on behalf of our committee, but he died a few months ago. I think under the circumstances I might ask your Lordship to let me put in his pamphlet ——

5400. We will ask Lord Salvesen to check it if necessary. His proof is full of statistics, but I do not think he has this particular one?—Well, the years are given from 1896 to 1899. This paper was written in 1901, and the total number of applications in the year 1896 was 119—this is in the Court of Session—59 the next year, 80 the next year, and 114 the next year. They vary from 59 to 119. In the first and second years it does not say how many were granted. In the third year 69 were granted out of 80, and in the fourth year all were granted—that is to say, 114 out of 114.

5401. What are the numbers in the sheriff's court?—They were 1,985 in 1896, 2,555 in 1897, 1,995 in 1898, and 1,997 in 1899—as near as possible about 2,000 each year.

5402. Are those figures in relation to separation cases?—Oh, no, my Lord, generally.

5403. But the point you are making is, that even when you have your sheriff's court close to, something like 2,000 per annum apply to use the poor roll?—Yes.

5404. So that even with the local courts you want the assistance of the poor roll?—Yes; in the last two years about 1,500 out of the 2,000 were granted.

5405. The inference you are seeking to draw, if I follow it, would be, that even if you give local jurisdiction for divorce to the county courts, you would still find need for assistance?—Yes.

5406. (*Sir Lewis Dibdin.*) Is not the point that where they had the option of the High or the local court, they went to the local court?—Well, I do not know how far there is an option I dare say it is so.

5407. (*Chairman.*) Well, it does seem to show that, even where you have a local court that can deal with the matters, a very large amount of poor assistance is required?—Certainly. I have no doubt it would be so with the county courts.

5408. I do not know whether you have gone into an estimate of the costs of the High Court and the county court?—Not in detail, There are others who know that so much better than I do.

5409. But having regard to distance and facilities, would you say you would anticipate a larger amount of expense if you come to London than by staying in the country?—That follows, my Lord. I have suggested Northumberland, Wales, or Cornwall; to bring witnesses and parties here from there, simply because the income is over 25*s.* a week—or 2*l.* or 3*l.* a week—seems to me to be absurd.

5410. Even if you had the solicitor and counsel assigned in London?—Yes. There are all the expenses of the witnesses, and the expenses of travelling, which are quite unnecessary. Of course, I quite agree there may be cases where a transfer is required; if one party is in Northumberland and one in Cornwall, it would be better to come here, perhaps, but they are generally all in one county, and it is an extraordinary expense to bring them here.

5411. Have you formed any opinion as to what limit should be placed on the exercise of the jurisdiction of the county courts?—I do not think there is any precedent for a limit according to the means of the parties. In all the limits put on the local courts, there is no precedent for anything of that sort.

5412. No, but there is no other limit possible to suggest, is there?—Yes, I think you might suggest the limit of the amount of alimony to be given, or a limit of the amount of property or income which has to be dealt with and distributed for the benefit of the wife or husband or children.

5413. But in the mass of cases before us they are local working people with wages—casual workers?—Then you need no limit at all. Supposing a man has, say, five guineas a week, and he has a family and children, and that is the whole income of the family. Is it not absurd to assume that he can afford to pay half that income to come to London, when he can get his jurisdiction exercised down there?

5414. But I suppose it would be difficult to adopt the suggestion that persons of unlimited means should go to these courts?—Then, my Lord, there might be an option, or a power of transfer where a considerable amount of property was concerned. But I think the power of transfer would be quite enough. There is no limit of jurisdiction in bankruptcy; and divorce is a sort of moral bankruptcy, in which the material means of the family have to be redistributed among the claimants. It is like a partnership where the capital of the partnership does not exceed 500*l.*, and there has to be a redistribution which is within the county court jurisdiction.

5415. Then you pass on to make certain observations which refer to the competition, perhaps I may term it, between the High Courts and the county courts?—Yes.

5416. I do not think you need go into that, except to bring our minds to the point you want to deal with. What do you want to say about that?—Well, I want to say this, that there is what, to my mind, from a historical point of view, is an unreasonable jealousy between the courts in London and the county courts. Historically that was perfectly intelligible. One of the great contests in English history has been the contest between the county courts and the King's courts. The county courts were never regarded as the King's courts in the old days, because they were formed before the Norman Conquest, and the others after. The result was there was a violent enmity between the central courts and the county courts, and the central courts ultimately entirely destroyed the county courts in the old sense. There were good reasons for that then: the county courts did not administer the King's justice, their judges were not appointed by the Crown, and the result was this contest. Ultimately they were reduced to trying cases of debt under 40 shillings, and then they were neglected, and they died out practically, but they still existed down to 1840 and the enmity survived. But when they were re-established in 1846 the judges were appointed by the Crown or the Lord Chancellor, and the whole historical reason and object of that competition and jealousy vanished, because the county courts now are part of the King's courts—the King's Justice. They are subject to appeal certiorari, and power to transfer and so on, and judges are selected from the same body as the judges of the High Court, and there is no ground as far as I can see now for any jealousy between the King's courts, or the superior courts, and the county courts. The tendency of Parliament during the last 45 years has been to insist

upon that, giving limited jurisdiction to the county court in most matters—jurisdiction up to 10,000*l.* in winding up companies; jurisdiction in some cases up to 1,000*l.* in Admiralty matters, and jurisdiction in equity up to 500*l.* and so on—and it is recognised that these are courts that can be trusted.

5417. Do you think there is still any jealousy existing?—I do. I believe you will hear another representative of the society I represent who feels very strongly that I am wrong in advocating county courts for these matters, and he has experience in the Divorce Court, and perhaps he may be right.

5418. Do you think that is a material ground which weighs with those that object to conferring jurisdiction on the county courts?—I do. It is intelligible from many points of view; it is intelligible from the mere persistence of a feeling that arose as I say, and of course for other reasons. It is better pecuniarily for the legal profession in London to have everything brought to London than to have cases conducted in the country. We cannot help that. There are feelings of that sort.

5419. Well, you would prefer to see this jurisdiction conferred on the county courts. Do you think that would be cheaper and would work effectively?—Yes, I do, and I do not see why it should not be done as effectively.

5420. Now is it your view—I am not speaking of each place where the county court is; you have said you think that already?—Yes.

5421. But whether all the places should be dealt with by the judges as they are at present arranged, or whether there should be a selected number to deal with this class of case, and take larger areas for the purpose?—I can see no reason for the latter plan, my Lord. The larger the area you give the more seldom can the judge go round it, and unless he goes to every place to which the other judges go—out to the rural districts—you are still depriving people of the possibility of getting easily to a judge. May I take Dorset, my own county. In the north of the county there is the town of Shaftesbury. The county court judge sits there as well as at Dorchester, which is the capital. Now, if a judge only sits at Dorchester it may take a man as long to get to Dorchester from Shaftesbury as it would take to get to London, on account of the circuitous nature of the railway.

5422. You would have it conducted near him?—Yes.

5423. And that could only be done by the judge who deals with the district?—I think that is the best plan.

5424. Now you proceed in your proof to refer to some judgment which shows the disastrous effect from concentration in London. I do not know what that case is, but we may as well have it?—I think you have it, my Lord. I sent a copy of it. It is in the "Law Times." It is the judgment of His Honour Judge Mulligan in Bircham *v.* Norton, 128, L.T., p. 202 (1 January 1910). I do not know whether I may read it.

5425. I am afraid it is very long?—It is a column and a half.

5426. Cannot you state what the point is, and what it indicates?—Yes, it was a case, my Lord, originally arising out of a conveyancing point. Three cottages were sold by the same owner to different purchasers. Two of them had been in the habit of having a right of way through the garden of the other, and the only other access to the house was through a drift way which was sometimes impassable in times of flood. The person who bought the garden over which the right of way went objected to the right of way—your Lordship is aware first the unity of ownership prevents a legal right of way—and they tried to stop the right of way. There lived in the two cottages, whose right of way was being taken away, an old widow in receipt of 2*s.* 6*d.* a week from the parish and a small amount of wages for mending for other people; and in the other a labourer with a certain number of children. This was tried before the county court judge, and he held that the garden was bought with notice of the right and was liable to it, and he refused an injunction. Then the owner of the cottages against whom he decided appealed to the Divisional Court in London, and the old lady and the labourer could not afford the expense of going to London. The Divisional Court recognised the difficulty of deciding this without them, and they sent to the county court judge for any information. He had not been asked to take a note under the statute, and he could only give his recollections, and the appeal was heard in London in the absence of both defendants, and the decision was reversed without hearing anybody on behalf of the old lady and the labourer with the children. Then after that an injunction was served and the cottagers were not allowed, of course, to go along this path. A flood came, and for days the access to the house was absolutely blocked except by this path. Consequently they went along it again—the children were bound to go to school—and they were all served with notices of imprisonment for contempt of court. The judge then said that Mrs. Seeley, the old lady, in order to enable her to go to London, would have to get more pounds than she had pennies (and she would be up to her knees in water if she went through the road), and he declined to send her to prison, though he said she was wrong, and the Divisional Court were justified under the present law in doing what they did in her absence, notwithstanding that they did not hear her. And because the children were bound to go to school, he said that he would not to commit them or the mother to prison for sending them to school, but he should warn them that not so much as one little foot was henceforth to go along this path. Then he had to send the father of the children to prison for seven days because he had pulled up thorns so that the children could go along the path.

5427. Need we go into any further details?—No.

5428. It only amounts to this. Unless people can get before the tribunal, then there will be disaster?—The impossibility there is of being heard, and ordinary justice done.

5429. But even if you give the county courts jurisdiction you would allow an appeal to the Divisional Court, I think?—Yes, but the answer to that is that you ought to get the appeal heard locally, or on circuit, or something of that sort.

5430. You mean that an appeal might be taken like that?—Yes.

5431. By the judge of assize, for instance, when he comes out?—Yes.

5432. I believe that is the Irish system?—I did not know that.

5433. I think the appeal from the county court judge in Ireland is to the judge of assize when he comes round?—I daresay.

5434. You have already dealt with the limitations of jurisdiction, and you do not see any necessity for it?—I do not see any necessity for it unless there is a large amount of property to be dealt with.

5435. You have dealt with the Scotch matter, too?—Yes.

5436. Then procedure. I do not know that we can deal with details of that?—No, my Lord.

5437. Your suggestion is, at any rate it should be of the simplest form?—The simplest form, and as nearly as possible analagous to the ordinary procedure of the courts, whether it is done up here or down there.

5438. Now, it has been suggested if the county courts have jurisdiction, opportunities of collusion would be greater. I should like to hear your views about that?—First, I do not understand why it is so; and, secondly, if it is so, I do not see why the county court judges are not as competent to deal with it as other persons. In common law and bankruptcy jurisdiction they can deal with fraud; and collusion is only another name for fraud. You require the local representative of the King's Proctor under a decree nisi undoubtedly, but I suppose even now the actual King's Proctor does not go down personally.

5439. It is inquiry made?—Yes, and inquiry can still be made locally by the registrar of the court or under direction of the judge of the court.

5440. And you do not see any difficulty in the county court judge detecting it, as far as any judge can

detect collusion?—No. Even judges here are deceived sometimes.

5441. That detection being in the province of the King's Proctor?—Yes. May I say, my Lord, there are many cases of collusion; the difficulty is that both parties are colluding, and therefore it is difficult to find it out. Many such cases occur in the Chancery Division in the matter of trusts and other matters.

5442. I did not catch that?—A similar collusion between all the parties represented may happen in the Chancery Division in the matter of a trust. Trustees and the tenant for life may very often be anxious to get the approval of the court to some scheme which ousts the interests of unborn people, and the judge must watch that, and has to avoid the dangers of collusion of a similar nature, though not to the same extent. There is nothing special in the Divorce Court in there being collusion between both the parties.

5443. And you mean county court judges have jurisdiction in those matters?—Yes, my Lord, a limited one, up to 500*l.*

5444. 500*l.* value of property?—Yes.

5445. But I think they can go on beyond that if the judge in London allows it to be done. There is a power?—Yes; you cannot commence it in the county courts; but you can remit it to the county courts.

5446. Now the next point you deal with is separation orders. Before you say anything about that I should like to ask you the basis of any experience you have had?—I confess the basis of any experience I have had is reading papers, and reading them from that point of view.

5447. How far does your experience in that matter come from the Charity Organisation Society?—Oh, the matter does come before the Charity Organisation Society.

5448. And you have had considerable experience there?—Yes.

5449. Let us see, then, what you have to say about those orders?—I think, made as they are now, they are most disastrous to ordinary sexual morality, because they are made and the consequence is that desertion has gone, and there is no remedy for desertion afterwards and the people practically marry others; there is no doubt about that. I have always myself been opposed to the magistrates granting separation orders, but that is rather on theoretical grounds, the confusion of civil and criminal jurisdiction.

5450. You mean this is a civil jurisdiction?—Yes.

5451. Which ought to be exercised by civil courts?—Yes.

5452. Have you any grounds for suggesting that those orders do lead to immorality?—Oh, we have frequently had those cases in the Charity Organisation Society, my Lord. We had to make it a rule then, not having an excessive amount of funds, never to assist a man or woman who was living with another woman or man as husband or wife, although very often, or possibly, they were the innocent parties to begin with. But that was a rule we had to make, because it was so difficult to find out in any particular case whose fault it was. A man and woman were living together, and apparently living together as husband and wife, but ——

5453. What I want to get at is this. You say you made it a rule not to relieve where a man and woman were living together irregularly?—Yes.

5454. Did you find, as a matter of fact, that that occurred in cases where there had been an order for separation under the original marriage?—Well, my experience in the Charity Organisation Society ended some 10 years or 12 years ago.

5455. That was before the Act of 1895?—No, not before the Act of 1895, but it was then comparatively recent.

5456. I do not want to weary you with this, but are there any other points in connection with the separation orders to which attention should be drawn in your opinion?—If I may express an opinion, I think they ought to be temporary, but I do not profess to be an expert in the matter. Then they ought to be followed by some attempt at reconciliation by somebody. I do not much believe in official attempts at reconciliation, but it had better be that than nothing else, and I think it should be possibly succeeded by a shorter order if the first attempt at reconciliation failed, with a renewed attempt at reconciliation after, and if that failed, then I think it should be a ground for divorce.

5457. What would be your view as to orders made where a man or woman has disappeared out of the country by desertion?—Well, it would follow if the order was temporary that my scheme would apply. If he did not return, and be reconciled, within the two limits of time, I would grant a divorce. Of course I do suggest here that if you have a separation order which follows on a conviction it is useless to have that separation order for a less time than the sentence of imprisonment, if there is one, because they cannot be reconciled while a man is in prison.

5458. Now the next point is with regard to publication. Would you tell us what your views are about that?—As far as all the details are concerned, and the parties, and the facts of the order—the details of the orders and the names of the parties—I think there ought to be compulsory publication in the "Gazette" and in the local papers, and, if necessary, at the expense of the State if parties cannot afford it, and that there should be registration at Somerset House.

5459. Would you include in that separation by deed?—I should have no objection to that; I have not thought of that question.

5460. Now details of evidence; what do you say about that?—Well, I do not see any objection, my Lord, to the publication of details of evidence, because I think they have a moral as much as an immoral tendency. I think the details of the Divorce Court have a tendency to disgust people with sexual immorality, and in addition to that, as one witness has said, they do produce evidence of collusion.

5461. On the other hand, do you think they have any effect in familiarising people with immorality?—I doubt it. You do not prohibit the details in cases of rape and indecent assault; the two are *in pari materiâ.*

5462. Do you know whether it is a fact or not that rape cases are not published in the local papers?—As a rule they are not.

5463. That is the action taken by the sensible papers?—Yes. Of course there are cases—cases of indecent assault—especially where there has been perjury, where they are frequently published, and I think that it is desirable where there has been perjury.

5464. Then the next point is "Amendment of law." Do you wish to go into that or not?—I do not wish to go into that for this reason. I came here more or less as the representative of a society which has not considered this question, and is not organised to consider it. I have opinions, and if I am asked any questions about them I must ask members of the Commission to remember that they are not answered in any representative capacity.

5465. If you do not wish to go into it I will leave it alone?—If your Lordship pleases.

5466. Whatever you said would be merely a personal opinion?—That is so.

5467. (*Mr. Brierley.*) There is just one question. In this case of assistance to poor men, you would still leave them liable to pay the expense of their witnesses and the expense of bringing them to the place of trial?—I would wish not to.

5468. You would relieve them of all expenses?—I would relieve them of all expenses.

5469. I was not sure if I understood you as to that. You would relieve them of every expense?—I would like to relieve them of every expense, but it cannot be done by rules of court, because an Act of Parliament is necessary to authorise public money for the purpose.

5470. If you relieved them of every expense there would not be much objection to trying them in London?—There is no reason why you should put extra expense on the State if the State can try them cheaper in the country.

5471. I understand in Scotland the expenses of paying the witnesses and bringing them to Edinburgh falls upon the parties?—Yes, but they are recoverable from the other side.

5472. I do not know whether it was on that ground —that they would still have to pay the witnesses' expenses—that you suggested that each county court should have a right to try cases?—That is a very strong reason, because, in fact, now they have to pay their witnesses' expenses. Unless you relieve them of these; it is a much stronger reason.

5473. (*Sir Lewis Dibdin.*) I think you are in favour of taking the cases away from London—the divorce jurisdiction, and giving it to the county courts, very largely on the ground of economy?—Very largely.

5474. And you have mentioned two things where you think there would be economy: one the expenses of appearance, and so on, and the other the cost of witnesses?—Yes, the fees and the costs; the fees of counsel and solicitors.

5475. I suppose you recognise, as far as the fees go, there might be a scale of fees in the High Court which would largely reduce them?—There might—yes.

5476. With regard to the appearance, and the filing of a petition, and so on; is there any reason why that should not be done by post? Is personal appearance really necessary at the registry?—I do not think there is any reason why it should not be done by post; but if it is done by post in divorce proceedings it ought to be done by post in all proceedings.

5477. Perhaps; but if it were done by post in divorce proceedings I suppose the expense of doing it in London would be very much the same as doing it in the country, would it not?—I suppose it would. Would you allow me to say it would be very difficult for a local person to do it without advice in the country.

5478. Quite; but I bear in mind your view that whether the proceedings are in London or in the country, professional advice is necessary?—Yes.

5479. Now, with regard to the witnesses. Are you satisfied that in all cases it would be cheaper to have a case tried in the country than in London, on the ground of the expense of the travelling of the witnesses?—In all cases where the witnesses are in one locality.

5480. Is it your experience that in divorce cases with the humbler classes the witnesses always do come from the same neighbourhood?—I have hardly any experience of divorce cases in the humbler classes, but in other cases they generally are.

5481. Would you let me say, we have had one witness here certainly (and perhaps more than one) with very great experience in the solicitor's branch of the profession, who says that in his view that is not the case—that the witnesses in these cases come from very different parts of the country. You might have the petitioner in Birmingham, and the witnesses to be brought from London to Birmingham, or perhaps much further. In a case of that kind would it not be probably cheaper to collect the witnesses in London rather than to take the witnesses from one end of England to the other?—I think I have already dealt with that by saying that in a case of that kind there might be a transfer. You could have power to change the venue if all the witnesses were in London.

5482. No, but with the witnesses in all parts of England they must be brought to one common centre?—That can be transferred in the same way.

5483. Would not that add to the expense of an action?—Hardly at all.

5484. Then why should not it be tried in the first place without a transfer?—If you are sure that is going to be so, let it be so; if you know beforehand all the witnesses are coming from different parts of England.

5485. Now, I was very struck with a case you gave of your own county for another purpose. I gather you say it would cost as much to take witnesses from Shaftesbury to Dorchester, in your own county, as to take them from Shaftesbury to London?—No, I only said time.

5486. I suppose the cost and the time are more or less commensurate?—By no means; you have to stop at junctions. There are three or four junctions between those two places.

5487. So where a man's time is money it would be cheaper for him to go to London?—No cheaper. It would take as much time, I said, but it would cost less to go to the county town.

5488. With regard to the judges of the county courts. Your view is that every judge of every county court should administer divorce jurisdiction in every court?—Yes.

5489. And you have considered the objection of the possible lack of identity of view where you have the jurisdiction administered by so large a number of judges?—Oh, yes.

5490. And you think there is nothing in that?—I think there is nothing in it.

5491. Do not you think it is human that a great number of men should have a greater variety of views than only one or two?—I am not so sure of that; I remember an old saying of two Scotsmen, one of whom said, "There's nane but Donald and I are saved, " and I'm nae sae sure of Donald."

5492. But there is another saying, "*Tot homines tot sententiæ*"?—Yes.

5493. Then you say that the courts are controlled by appeals?—Yes.

5494. Is it from that cause that appeals would be important. It is not matters of law, is it, but the way that different judges look at facts. Is not that the difficulty?—But you have that difficulty in every case; not only in divorce proceedings.

5495. Quite so, but it is suggested that the difficulty is greater if you have 50 people administering the jurisdiction than if you have two?—But I say you have that in all other jurisdiction, and why not in divorce? It can be controlled in Admiralty jurisdiction, and common law jurisdiction, and bankruptcy jurisdiction.

5496. But why, if you have that drawback in other jurisdictions, extend it to another jurisdiction?—I do not think it is a drawback.

5497. What is your view about trial of these actions by jury. Are you in favour of it or not?—Sometimes a jury is very important.

5498. Have you had any experience of county court juries?—Yes; not much.

5499. Do you think they are a satisfactory tribunal for very important matters, such as marriage?—For matters of this sort, I should think they are specially suitable. They come from the same class as the people who are suitors, and are very much more in touch with them than the judges—certainly, than the London judges.

5500. You regard this as an important jurisdiction?—Yes.

5501. And you think county court juries are particularly suitable to exercise it?—In certain cases.

5502. Have you considered the suggestion made by Mr. Justice Bargrave Deane when he was before the Commission the other day, which was, in lieu of using the county courts, that either one of the present judges, or an additional judge if necessary, should from time to time go down to different centres in the country, wherever it was necessary, to try these cases. Do you think that is a practical suggestion, or otherwise?—I do not think it is practical. In the first place, it would mean a lot of delay. There are 500 places where the county courts sit, I think. It would be impossible to go to all those, and if he wanted to select places, it would be very inconvenient for the litigants.

5503. Would you anticipate a great number of these country divorces?—Judging by separation orders, I should.

5504. Do you regard the 7,000 separation orders as an index to the number of divorces?—I have no ground—and I do not think anybody has—for getting at the proportion; but I should say the proportion would be considerable.

5505. You know a large number end in reconciliation?—I am not aware what proportion.

5506. But you are aware there is a large proportion?—Yes.

5507. Perhaps you will take it from me, that is the result of evidence before us?—Yes, if there is a large proportion, I accept it, and I should be very glad to hear it.

5508. In a great many of those cases there is nothing in the nature of a matrimonial offence alleged, is there?—It is not material to allege it; there may be, but it does not come within the jurisdiction of the magistrates.

5509. But is it permissible to assume they exist?—It is not permissible to assume that in every case they exist. It is, I think, permissible to infer that in a great number of cases they do, because very often they are the cause of disputes between husband and wife which lead to assaults.

5510. I suggest that the number of separation orders made is no index whatever to the number of divorces there would be?—I do not accept that suggestion. I agree you cannot say what proportion there would be, but the fact that there are a large number of separation orders is a fact from which I should draw the inference that a considerable proportion of those would be divorce cases.

5511. Do you really think that the objection that is undoubtedly felt, as we know from the evidence produced here, by the profession and by the judges, to transfer to the county courts this jurisdiction is the result of jealousy?—A good deal.

5512. You really do?—I really do, yes. I do not want to press that too much, but I really do.

5513. And I think you said you thought self-interest had something to do with it?—Yes, well I think so.

5514. You really do?—Yes.

5515. I think you are in favour of there being no limit of jurisdiction in divorce matters in the county court?—I do not see where logical limit comes in, but I have no objection to any limit that may be devised.

5516. May I take it in this way, that divorce is quite unlike any other sort of litigation in this, that the principal point concerned is nothing to do with property at all. I mean that the marriage of a poor person is just as important as that of a rich person?—So is partnership with poor people as important as with rich people; and that is why you give jurisdiction to county courts to dissolve a partnership.

5517. I do not think you follow me. I think I agree with you. I suggest that divorce is quite different from the jurisdiction as to contracts, for instance, where the importance of the litigation may be measured by the amount of money involved; but in the case of divorce money is no criterion at all. I suggest to you that both as to the parties and as to the State, one marriage is as important as another?—Oh, yes, I quite agree.

5518. Then that is a reason, is it not, if you give jurisdiction to all of the county courts, to make it a complete jurisdiction, without any limit at all?—That is rather my view.

5519. That is what I thought. Then, if that is so, why should the London courts—expensive courts—be kept up at all. Why should the rich man, at the expense of the State, have a different court from the poor?—You keep it up mainly in London, because as a rule you do not give those jurisdictions to London county courts, as it is more easy to get to the central courts.

5520. It is not your intention to give jurisdiction to the London county courts?—Well, it is not done generally; they do not have bankruptcy jurisdiction, for instance.

5521. Is it your view they should not have divorce jurisdiction?—I do not care much what is decided about that.

5522. But I cannot see why the expensive court should be kept up?—Well, you are putting a proposition [illegible] have not considered. I did not think it was that [illegible] jurisdiction of this Commission to consider within the [illegible] of the Divorce Court; I do not know; I the abolition [illegible]idered that question. have not cons[illegible] I will not trouble you about it. Now,

5523. Well, [illegible]ing about collusion in Chancery being you said someth[illegible] collusion in the Divorce Court?—a similar thing t[illegible] Analogous.

5524. But you ar[illegible] aware, are you not, that collusion is, on the testimony of every-in the Divorce Court [illegible]h it, very common?—Oh, very body who has to do wi[illegible] common.

5525. Would you say from your experience that collusion is common in Chancery?—No; I said in my evidence it was not so common. In a divorce case the temptation to collusion is much greater.

5526. It is rather difficult, then, to compare the one with the other?—No, the difficulty of comparison does not come from the number of cases, but from the nature of the cases.

5527. You make no general suggestion as to the amendment of the law, but incidentally I gathered you were in favour of divorce for desertion only?—That was where it followed a separation order, was it not?

5528. Yes, continued desertion?—Well, that is consistent with the present law or with a change in the law, you see. These separation orders may be cases where there is a matrimonial offence, but not a matrimonial offence which alone would justify a divorce. Without altering the law at all, if you have a separation order made equivalent to desertion and added to that, you could still get a divorce.

5529. Is it consistent with the present law to give divorce for desertion only?—I believe not.

5530. And you are in favour of that, I gather?—I have not said so.

5531. I thought you did?—No. If you were to ask me I might say so.

5532. (*The Archbishop of York.*) I only want to ask you one or two short questions with regard to the general principles involved. You would agree, would you not, that it is in the interest of the State, with regard to these marriages, to maintain marriage as far as possible—to maintain the marriage tie?—To maintain the marriage tie, certainly, so long as the marriage contract is adequately carried out by both parties.

5533. And it is because it is in the interests of the State to preserve the marriage tie as far as possible that it has hitherto surrounded the proposals to dissolve the marriage tie with very special safeguards?—I do not know that that is the reason. The reason is, I think, because extraordinary difficulties have been thrown in the way of any dissolution, mainly by the clergy.

5534. But you do not suggest that the State has hitherto reserved these cases in the High Court merely in order to put difficulties in the way of poor people?—No; the attention of the State was probably not called to that at the time. They simply followed the precedent of the Ecclesiastical Court, and set up their court in London.

5535. But I think there were many persons at the time of the 1857 Act who advocated much more widely extended courts, and that was rejected, and my point is this, that the reason why the State has kept this jurisdiction in one central court is because the State, for wide public grounds, considered that very special safeguards ought to surround proposals to dissolve the marriage tie?—I do not agree. I do not think that is the reason why they set up a central court.

5536. Then what was the reason?—Simply they followed the precedent of their predecessors.

(*Sir Lewis Dibdin.*) That was not followed.

5537. (*The Archbishop of York.*) It was not followed at all. Do you say that for all these years the State has kept a separate jurisdiction in the Divorce Courts without any purpose at all?—Without any purpose at all except the general centralization of the courts in London, which had been the policy of the State in other matters.

5538. But there has been continual decentralization in other matters?—That is since 1857.

5539. Well, why has not the State decentralized this as other matters?—Because its attention has not been so forcibly called to it before. The State never moves in this country unless it is shoved.

5540. Do you say the State has wilfully withheld or carelessly and heartlessly kept from poor persons this remedy since 1857 for no other reason than that it has not thought about it?—For no better reason than that it had not thought of it, I think.

5541. (*The Earl of Derby.*) There is one question I want to ask. In these cases of separation orders the man very often lives with another woman?—Yes.

5542. And in that case there are very often illegitimate children?—Yes.

5543. Do you think the parents in those cases treat those children less kindly than they would do if they had been legitimate. You may not be able to answer?—Oh, I have had plenty of experience of that. I do not think so.

5544. You do not think so?—No.

5545. Then with reference to the power of making these separation orders into decrees of divorce; it would not really affect the children as far as kindliness of home life goes?—Of course it would affect the rights of the children. The other matter would vary very much.

5546. You cannot give any answer to that?—No, I do not think there is any general rule.

5547. (*Sir Lewis Dibdin.*) May I ask a question that arises out of the examination. I think you told the Archbishop of York that the establishment of the court in London was following the precedent of the ecclesiastical courts. Are not you aware that prior to the Divorce Act divorces were granted by the consistory court in every diocese?—True. I was thinking of the change in the law.

5548. And are not you aware when the Divorce Act was passed —— ?—They did not give divorce as we call it at all, you know.

5549. No, but matrimonial jurisdiction was administered in every consistory court in England?—Yes.

5550. And are not you aware in the Divorce Act as passed, the matter having been discussed in Parliament, there was an actual power included to allow the judge on assize to deal with these matters?—I had forgotten that.

5551. A power that was repealed the next year?—Yes.

5552. (*Mr. Brierley.*) And on the Bill as it passed the House of Commons, chairmen of quarter sessions were given power to try divorce cases?—Is that so?

5553. And that was struck out by the House of Lords?—Well, that does not prove anything.

5554. (*Chairman.*) One or two questions with regard to practice. It was suggested petitioners might be able to post their papers to start a suit in London?—Yes.

5555. What would be the position in such a case of the respondent who had to appear. I think they have to appear by signing the book in London themselves or by their solicitor?—I do not know that. I suppose it would have to be forwarded down to them by post. It would make complications I think.

5556. I want to see how the respondent would be affected, and whether there is any machinery by which he could appear in London without attendance or a solicitor?—I think some machinery would have to be devised; but this is a question put upon me this morning, which I have not considered before.

5557. Then if there were applications about custody, and so on?—It would all have to be dealt with by post I suppose.

5558. Now your country experience is in Dorsetshire?—Well, that is my native place.

5559. Where you attended sessions?—Where I arranged for the defence of the poor prisoners, yes.

5560. Do you think, apart from cost, there is any real difficulty about witnesses getting away for time to come to London as compared with the time to attend their local courts?—Oh, of course the poorer they are the more difficult it is, because the employer dislikes their going.

5561. Then with regard to these questions of cases that occur where witnesses are in different parts of the country. We have had some figures which show the great bulk of these cases are undefended cases; I dare say you are aware of that?—Yes.

5562. Do you think it would be likely that in those cases—in poor people's cases—there would be many witnesses to come from different parts?—No, certainly not, in undefended cases.

5563. One other point about these districts. You said something about the jury knowing the district better than the county court judge and he better than the High Court judge. You said juries were of the same class as the people and they were more in touch with them than the county court judge, and he more than the High Court judge?—Still more than a judge who lives in London.

5564. That is why I asked you about your district. Do you think it is an element or not that the judge should have a knowledge of the district?—I think either the judge should have a knowledge of the district or that there should be ample power of trying by a jury which has.

5565. Take the county court judge who, I suppose, goes round Dorsetshire?—Yes.

5566. I want to know what your view is as to getting in touch with these cases and people as compared with the High Court judge coming round?—I think the more he knows the place, the more he knows the nature of the witnesses and their dialect, manners, and behaviour, the better.

5567. Do you think that comes into the question of this jurisdiction?—Yes, I do; I think it affects the power of the judge in dealing with and testing the credibility of witnesses.

5568. These are matters of fact?—Yes.

5569. On which the question of credibility would be very important?—Yes.

5570. Now one other point—about the questions you were asked about the Act of 1857. You are aware, I daresay, that that Act took away the jurisdiction, as Sir Lewis reminded us of the consistorial courts?—Yes; I had forgotten that.

5571. Have you studied that to know if that was a ground of complaint or not?—No, I have not.

5572. One other matter about that Act. Have you looked through the evidence which was given and which was reported prior to that Act?—No.

5573. Well, do you know, one way or the other, whether the question of how this would work out in the country cases was gone into at all in the evidence before that Commission?—No, I have not gone into that.

(*Chairman.*) I ought to thank you on behalf of the Commissioners for your attendance.

(*The following documents were referred to and handed in by the witness.*)

A.—*Arrangements for the Defence of Poor Prisoners at the Dorset Sessions*, 1902–3, *as follows* :—

At each quarter sessions, the cases of all otherwise undefended prisoners shall be offered to counsel present at the sessions for selection in the following order (each counsel in the first instance selecting one only), that is to say :—

Firstly. To the counsel who hold no briefs, either for prosecution or defence, successively in order of seniority; and if the defences be not then exhausted,

Secondly. To the counsel who hold no briefs for defence, successively according to seniority; and if the defences be not then exhausted,

Thirdly. To the counsel who hold briefs for defence, successively according to seniority; and if the defences be not then exhausted, the process shall be repeated until they are exhausted.

It shall be the duty of the senior counsel present to re-arrange the defences as nearly as possible according to the above scheme in the event of any counsel so selected subsequently receiving a brief for the prosecution in the same case for which he is selected to defend, or a brief for the defence in any other case.

No counsel shall be bound to accept any such defence.

No counsel accepting any such defence shall accept any fee for it.

Nothing in this scheme shall affect or interfere with the defence of prisoners in the usual way by counsel instructed by solicitors, nor the system of dock briefs.

Consequential Regulations.

1. It shall be the duty of the junior counsel present to ascertain at the latest by 7 p.m. on the day before the court sits :—

(*a*) The names of counsel intending to be present at the sessions, and the cases in which they hold briefs;

(b) The number of prisoners undefended by solicitors, their names and the offences with which they are respectively charged, and to communicate the information to the bar mess at dinner.

2. It shall be the duty of the senior counsel present to allot the defences among the counsel present according to the method above stated.

3. It shall be the duty of the junior counsel present to communicate (if possible through the governor of the goal) to each such undefended prisoner, the name of the counsel who will defend him, if he desires it.

4. Arrangements shall, if possible, be made with the governor of the gaol for communicating to all such prisoners on the morning of the sessions this arrangement for gratuitous defence.

5. For this purpose, and in order to avoid all misunderstanding, a notice shall be printed at the expense of the mess, and supplied to the governor. The notice shall be to the following effect:—

To , County Gaol, Dorchester.

If you are not otherwise defended, you may, if you wish, be gratuitously defended by counsel, who will be selected and allotted to you by the bar; but you may, if you prefer it, take any of the following three courses:—

1. You may instruct and pay a solicitor, who will select counsel to defend you. This is the usual and fit course.

2. You may, on payment of one guinea (21*s.*), select any counsel present, and ask him to defend you. This you must do when you appear in court to plead.

3. You may defend yourself without the assistance of any counsel.

B.—*Draft Rules for an improved procedure in formâ pauperis, submitted by the "Central Legal Aid Society" to the Lord Chancellor and the Rule Committee, as follows:—*

ORDER XVI.

PART IV.

PROCEEDINGS BY AND AGAINST POOR PERSONS.

Rule 22.—Any person may be admitted to take or be a party to any legal proceedings as a poor person on satisfying the court or a judge that he has a reasonable cause of action or defence, and that his means do not exceed the sum of 50*l.* (excluding his wearing apparel, household goods, tools of trade, and the subject matter of the action) or such larger sum as the court or judge may determine, having regard to the probable cost of the litigation.

Rule 23.—There shall be kept by the proper officer in every division of the High Court, and in such district registries as the Lord Chancellor shall from time to time direct—

(1) List of solicitors and of counsel willing to be assigned to inquire into and report upon the application of any person to take or be a party to any legal proceedings as a poor person.

(2) List of solicitors and of counsel willing to be assigned to assist poor persons when admitted in the conduct of the proceedings.

Rule 24.—A person desirous of being so admitted as a poor person shall make an application in the prescribed form, stating his means, and the name of any proposed party to such proceedings and the nature of the applicant's case.

Rule 25.—The application shall be referred for inquiry to one or more solicitors or counsel (whether named in the list to be kept pursuant to Rule 23 (1) or not), who shall report whether and upon what terms the applicant ought to be admitted as a poor person. For the purpose of such inquiry the reporters may require the attendance of the applicant and may hear any other person, and may require any facts to be proved by affidavit, and may, unless it be deemed undesirable, allow any opposite party to attend the inquiry.

In making such report, regard shall be had to the probable cost of the litigation in relation to the matter in dispute, and also to any offer which may be made by any opposite party. Any such offer shall be deemed to be without prejudice in case it is not accepted.

Rule 26.—Upon the production of the report mentioned in the preceding paragraph, the court or a judge may admit the applicant to take or be a party to legal proceedings, as a poor person. And the court or judge or proper officer shall assign to the applicant a solicitor and a counsel (whether named in the list kept pursuant to rule 23 (2) or not) to assist him in the conduct of the proceedings.

Rule 27.—A solicitor or counsel to whom an application is referred under rule 25, or who is assigned under rule 26, shall not be at liberty to refuse his assistance unless he satisfies the court or a judge that he has some good ground for refusing.

Rule 28.—When a person is applying or is admitted to take or be a party to any legal proceedings as a poor person, he shall not be liable to any court for fees, nor to pay costs to any other party, except as provided by the rules of this order, and no person shall take or agree to take, or seek to obtain from him any fees, profit, or reward, either for the inquiry or report, or for the conduct of the proceedings; and any person so doing shall be guilty of a contempt of court. If any person so applying or admitted shall give or agree to give any such fee, profit, or reward, his application or admission, as the case may be, may be dismissed or struck out, in which case he shall not afterwards be admitted as a party in the same cause as a poor person, unless otherwise ordered.

Rule 29.—Notwithstanding the preceding rule, costs ordered to be paid to a poor person shall, unless the court or a judge shall otherwise order, be taxed as in other cases, and such fees for his solicitor and counsel and other expenses as might properly have been allowed in an ordinary action, and as the taxing master shall determine shall be recoverable, and may be paid to and received by his solicitor and counsel accordingly.

Rule 30.—When a substantial amount is recovered by a poor person so admitted, the court or a judge may order the payment out of the amount so recovered to the solicitor of such costs, including the proper fees of counsel, as would have been allowed to the solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner, less such amount as may be recovered from any other party, provided that the total amount so paid out shall not exceed one fourth of the amount recovered.

Rule 31.—Every notice of motion, summons, or petition on behalf of a poor person (except an application for admission to take or be a party to legal proceedings, or for discharge of his solicitor) shall be signed by his solicitor. It shall be the duty of the solicitor to take care that no such application be made without due cause.

Where, in the opinion of the judge, any such application has been made without due cause the court may:—

(1) Order that the solicitor shall pay the costs of such application of the opposite party; or

(2) Order that in the event of the applicants recovering any substantial amount in the action the costs of the opposite party of such application shall be set off against the amount recovered.

Rule 32.—Any person admitted to take or be a party to any legal proceedings in the High Court as a poor person shall, on the certificate of his counsel that there is a *prima facie* case for appeal, be admitted to appeal to the Court of Appeal as a poor person without further order. If any person who had not taken or been a party to any legal proceedings as a poor person in the High Court shall desire to be admitted on the appeal to the Court of Appeal as a poor person, the like procedure shall be followed as is provided by these rules for the High Court, and the application shall be referred by the Court of Appeal or proper officer for inquiry, as if the application were made in that division of the High Court from which the appeal is brought.

Mr. JOHN HENRY WATTS called and examined.

5574. (*Chairman.*) You are a barrister-at-law?—Yes.

5575. You are a member of the Central Legal Aid Society?—Yes, it is a society formed some two or three years ago on the suggestion of Sir Charles Mathews, the Director of Public Prosecutions.

5576. Is that a society of which Mr. Lock is also a member of the committee?—Yes. The object of the society was this. Sir Charles Mathews, who, of course, has had an enormous criminal experience, said that as the result of that experience he felt there were many poor people who, in his opinion, at any rate, were quite innocent, and were brought to trial, and because they had not legal aid through their inability owing to want of means to secure it, were very often sent to prison solely as the result of their poverty, and he thought it was very necessary a society should be formed to prevent a continuance of that sort of thing, and he said he thought if many young solicitors and young barristers who were not busy on their own work would give their names as being willing to help, it would be very much to the advantage not only of the poor people but the State itself. In other words, it forms a sort of legal hospital.

5577. That has resulted in these rules suggesting the proposed changes which Mr. Lock has mentioned?—Yes.

5578. You have had some practise in the Divorce Court too, I think?—I have been practising in the Divorce Court for four years.

5579. And would that be of assistance in that class of case as well as in the other?—Yes, it would.

5580. I need not go through your proof with much detail because so much of the ground has been covered, but do you suggest or not that the present expenses make it a difficulty, if not an impossibility, for the poor to come to London?—Absolutely, my Lord. There can be no question at all about that. Take the case of a poor miner in Northumberland. Supposing his wage is 25*s.* a week, and he has a wife and family. How can he come to have his case tried before the court in London, when his expenses would be, if he lived in Northumberland, anything from 40*l.* to 70*l.* It is a denial of justice to such people. You might as well offer him Buckingham Palace as the advantages of the divorce laws under those circumstances.

5581. Would not that be got over *in formâ pauperis* cases, or is not that adequate?—It is not adequate, unless the State provides the man with money to conduct his case.

5582. Does that lead you to any conclusion as to the desirability of maintaining the jurisdiction only in London, or of extending it to the country—to local courts or possibly to some other court?—Well, my Lord, this is my opinion; if you are going to maintain the present system of having the court in London, you will have to provide money at the expense of the State to enable poor people who do not live in London to obtain divorces. If you do not do that, and if you do not try the cases in local courts, in my opinion at any rate this state of things arises, that you get the law brought into contempt in this way. It is not only a matter that affects the people themselves, but they say, and surely with justice: It is all very well; the law is for the rich; my wife has deserted me; she is living in adultery with another man, and I cannot get rid of her because I have not got money; if I had money I could do it. And that does amount to a denial of justice to these poor people.

5583. Then the remedy is rather to establish a form of tribunal in the country?—That is the other alternative, my Lord.

5584. Have you any definite views as to whether it would be more satisfactory if the county court is selected or whether there should be a judge going round?—Well, my Lord, it is only my own opinion. I sent in my evidence many weeks ago, quite independently, of course, of the evidence that Mr. Justice Bargrave Deane was going to give. I had no idea he was giving the same, and I am delighted to find I agree with him. It seems to me in the country you have a certain machinery at your hands in the existence of the county courts; but I am strongly against having divorce cases tried in the county courts as they are at present constituted, and for this reason. The atmosphere of the county court is that of a debtors' court. It is that of a court where if a man comes and says: "Smith owes me 2*l.*," the judge in effect says, "Is Smith here?" "No." "Does Smith admit the "debt? either he does or he is not here to defend it"; judgment at once for the plaintiff. That is the atmosphere of the county court.

5585. Is that the atmosphere when they are trying workmen's compensation cases, or bankruptcy cases?—In the workmen's compensation cases they are always defended, my Lord.

5586. But that is not the atmosphere then?—Either I did not not make myself clear, or your Lordship misunderstood me. I say that is the atmosphere in a large class of cases that come before the county court, and which are undefended.

5587. But that does not necessarily indicate that a county court judge has only the mind to deal with those cases?—No, my Lord, but I am taking the great class of divorce cases that would come before the county court would be undefended. I do not know whether I am going to another subject, but I think there can be little doubt that a great number of people in this country regard collusion as a very desirable thing. I know that may sound startling.

5588. Why do they regard it as desirable?—Because, in my experience as a practising counsel, when cases are brought to me in chambers, I find people think if a man and his wife cannot get on, and they are evidently unsuited to one another, it is best to give them another chance to re-marry.

5589. Do you mean that it is the great majority of opinion?—I am absolutely and sincerely of opinion that that is the opinion of the people of this country.

5590. If so that would rather lead to the necessity for abolishing the opportunities of collusion, and taking the view of the majority of the country by allowing people to do that?—I agree that is the conclusion, but that is not administering the law as it at present stands.

5591. We are not dealing with the law as it at present stands. We are considering whether amendments are required. Do you go so far as to say it would be desirable to introduce the view of what you term the majority of the people, namely, that it should be a matter of agreement?—No, I do not.

5592. That would abolish all collusion?—Absolutely.

5593. At any rate it does, in your view, show, if that is the general view, that it is because the law does not meet the exigencies of the case?—That is so, my Lord.

5594. To what extent are you justified in expressing that that is the view of the majority of this country?—Everyone, I think, has their own general experience, but it is a matter I have always taken the greatest interest in. I have collected evidence for my own knowledge; I have discussed the matter with very many people; I have discussed it with people working amongst the poor, and with them there is no doubt that that is so. In the case of other classes the feeling with regard to the scandal, and so on, and considerations as to the children, come in; but those matters do not influence the poorer classes.

5595. Did you read Sir John Macdonell's evidence?—Yes.

5596. Do you then agree or not with the suggestion he made about long-continued persistence in a desire to separate being a ground for divorce?—I did not catch that, my Lord.

5597. He expressed as one of his suggestions that a long-continued desire, adhered to, to separate, should be permitted as a ground for dissolution of marriage?—I think possibly if there were no doubt about it, it might be so. I think it is going rather far.

5598. However, you would prefer to see the suggestion of Mr. Justice Deane carried out with regard to jurisdiction?—Well, my idea was this, that the machinery of the county court should be used, and that

an extra judge should be appointed to the Divorce Division, and that one of the three divorce judges should go round to the various county courts and try the divorce cases.

5599. Would there be any difference between that and the suggestion that, I think, one or two or three of the county court judges should do that very business as county court judges. I do not see any substantial distinction?—I think there is this difference, that the divorce law has been always kept very separate from the other law of the land—possibly because it is a survival of the ecclesiastical law—and I do think that the fact that certain judges are divorce judges does help in trying divorce cases.

5600. But would there be any substantial distinction between appointing a judge of the High Court to go round and appointing a judge who forms part of the county court bench for that very purpose?—I think it would be advisable to keep it to the Divorce Division.

5601. Although the whole proceedings were conducted in the county court?—Yes. My great reason for objecting to having cases tried by county court judges is this, that you would get 50 standards——

5602. That is not the suggestion I was making?—No, my Lord, I am going back to my point that I strongly object to cases being tried by county court judges.

5603. I want to understand this point about standards. Why should there be any difference in standards when the case is purely one of fact?—My Lord, it is this. In these divorce cases that would be tried in the county courts the majority would be undefended. There are many people willing to help a man or woman to get a divorce, and those people do not always stand to a fact or two if they can help it forward. That is one reason. Then collusion would be rampant.

5604. I do not quite follow you there?—Well, if the judge is always trying divorce cases I think he is far more likely to ascertain whether people are telling the truth in reference to that particular subject.

5605. You think he has enough chance in 10 minutes or a quarter-of-an-hour undefended case?—Yes, my Lord, I do.

5606. The next point you deal with is a point as to a variation of the Married Women's Act?—May I say one more word on that first. So strongly do I feel that, that if I could not have a divorce judge to go round and try them in the county courts, I should rather see the present system maintained. With regard to the 50 standards, I know some people say: You have 50 standards in workmen's compensation cases and bankruptcy matters, and in all the different things tried in the county courts. But I venture to suggest that is nonsense, because all those cases are defended, and you have the parties at arms' length before you. But in divorce you have one person trying to obtain somethings he wants, most probably with the sympathy of the court on his side, and certainly with the sympathy of his friends, and it is quite a different matter altogether. That is why it is so very different in divorce cases, and you would be setting up 50 different standards for divorce.

5607. Then you have an amendment to suggest to the Summary Jurisdiction Act. You would not think it necessary that a woman should be obliged to leave the home before she gets an order?—That is section 4 of the Summary Jurisdiction Act of 1895.

5608. We have had that point before, and I think it is clear?—If your Lordship pleases.

5609. With regard to the points as to magistrates' orders, have you had any experience?—I have had quite a number brought to me in chambers. Where a woman has obtained a separation order, and finds herself in a position which she never realised. I am sure it is in your Lordship's knowledge.

5610. Not being able any longer to prove desertion for two years?—Yes.

5611. That is the Dodd *v.* Dodd case?—Yes.

5612. What amendment would you suggest there?—I think, my Lord, that your Lordship's decisions in those cases have altered the practice to a great extent. I think formerly when these poor women went before the magistrates and asked for relief, that the magistrates almost, as a matter of course, gave them what they did not ask for, namely, a separation order—as well as a few shillings a week.

5613. You would confine it to the maintenance order?—I should confine it to the maintenance order, unless it is clear that the woman was asking for a separation order.

5614. But that has been remedied, you think?—Yes, I think that has been remedied by your Lordship's decisions very largely.

5615. As to publication. Have you any special view about that?—Yes, my Lord. When I am giving evidence on these points, I want to say I am not giving it on behalf of all the members of the committee of the Central Legal Aid Society, because we differ.

5616. What is the difference between you?—It is not much, but the Central Legal Aid Society has been established for many other things than divorce, and they have not gone into these matters, and that is why they ask me to give evidence on their behalf here.

5617. But you say there is a difference of opinion about publicity?—Yes, there is.

5618. Can you give us any idea as to the balance of opinion, one way or the other?—Yes, I think the balance of opinion is in favour of that which I am expressing, that there is no necessity to alter the present state of things in reference to publication. I think the policy in the past has been this, that publicity is a deterrent. Every good has some compensating evil, and, of course, publicity is a bad thing in many cases, but if you are going to do away with publicity in divorce cases, surely there are many other cases the reporting of which, as far as details go, are much nastier and more repellant than divorce cases.

5619. Is this balance a preponderating one, or is there an equal division of opinion?—I think there is a preponderating feeling in the direction I am giving evidence in.

5620. What is the number of your committee?—About a dozen, my Lord.

5621. Do you recommend a temporary separation order?—I think it would be a good thing. It would make the parties come before the court again, and give them an opportunity for reconciliation.

5622. Would you agree that the maintenance orders should be made without a separation?—Oh, yes, certainly. I think that has been remedied by your Lordship's judgments very largely, but I do not think many magistrates in the country appreciate it.

5623. Then the next point you deal with is the grounds of divorce. Is that a matter of your own opinion, or are you presenting any representative opinion?—I am not binding the members of the society. In a society like that there must be divergencies of opinion.

5624. Are you able to give us any grounds on which you fix on these points?—Yes, my Lord. I say, in the first place, that I think the ground for granting divorce might be widened; and I say in the case of incurable insanity, or where either the husband or wife has been confined in a lunatic asylum for life as a commutation of the death sentence, then a divorce might be granted in those cases.

5625. That is imprisonment?—Yes.

5626. You have got insanity and imprisonment?—My Lord, they are confined in an asylum for life, or during His Majesty's pleasure, in commutation of the death sentence. I think in a case of that sort that relief should be granted if a husband or wife wanted it.

5627. Then are you in favour of a wilful desertion for a period being sufficient?—Yes; I think when there has been wilful desertion, and where the husband or wife refuses for, say, five or seven years to come back to the spouse, that should be a ground for divorce.

5628. And you put absence for seven years and not being heard of?—Well, one may presume death after seven years, and I think where either party has disappeared it very possibly is death, and that then, if either the husband or the wife wishes to marry again, they should have the chance.

5629. Then the last point is that, assuming the present law remains, you recommend curtailing desertion from two years to six months?—Yes, my Lord. I say if a husband wilfully deserts his wife for six months, and he has also committed adultery, that then that should be a ground for divorce. I say that because it is a remedy now for the rich only. If a rich woman's husband leaves her she at once brings a suit for restitution of conjugal rights. She writes and asks him, first, to come back, and if he does not she brings him before the court, and the court says: "He must come back in 14 days." If he disobeys that, that is legal desertion, and if he has committed adultery she can have a divorce. In the case of poor people that is not so.

5630. They cannot afford the expense of the intermediate suit?—They cannot afford the intermediate suit, and I submit that is the sort of thing that brings the law into contempt, and should be altered.

5631. Would you retain the suit for restitution at all. It has been suggested here that that is one of the principal causes for collusion?—I suppose, logically, my suggestion does away with the suit, although I think there have been instances where the suit has been brought and people have come together again, and one does not wish to do anything that prevents the chance of reconciliation.

5632. You sum this up in this way, I think: "Generally, in my opinion, it is of such great im- " portance and in the interests of public welfare and " morality that poor people should have the oppor- " tunity of obtaining divorce, that in cases where they " cannot afford even the lessened expense which would " be entailed in the hearing of a case in the local " county court, that I think some means should be " devised by which the necessary expense should be " met by the State"?—That is so, my Lord.

5633. That is the point you make?—Yes, my Lord. (*Chairman.*) Thank you very much.

5634. (*Mr. Spender.*) I see you do not put among your five extensions the equalising of conditions between men and women for divorce?—No.

5635. You are not in favour of that?—No.

5636. If that were adopted it would banish a great many of the causes that would make different standards in the courts?—I do not follow that.

5637. If simple adultery were a ground for action for divorce on a woman's part, it would not be necessary to put in the plea of cruelty?—Obviously.

5638. Well, perhaps I should not ask you this, but supposing that were the state of the law, your objection to county courts, as possibly finding these standards might be modified a good deal, might it not?—No, I do not think so at all. I think everything I have said as to county courts would equally apply then.

5639. In that case the grounds for divorce would be reduced to the simple ascertainment of fact?—No, no more simple than it is now in the case of a husband suing for a divorce. I do not see your point at all.

5640. I thought the difference of standards of which you spoke applied to interpretation of different grounds for divorce, say the interpretation of cruelty and the like. This is rather what I want to get at; is it a difference in ascertaining facts? Do you think two county courts would take different views of what constitutes evidence for adultery, for instance?—I said in answer to Lord Gorell, I think, that judges who are always trying divorce cases have that requisite knowledge; they have a certain touch in dealing with divorce cases that I do not think other judges would get.

5641. (*The Earl of Derby.*) Only two questions. You mentioned just now, in answer to Mr. Spender, that you would not look upon mere adultery on the part of a man, apart from cruelty and desertion, as being a ground for divorce?—Yes.

5642. Desertion, of course, is fairly easy to prove, is it not?—Well, speaking as a practising barrister, I do not think it is. Very often it is very difficult to prove.

5643. Is not cruelty equally difficult to prove?—Yes.

5644. And yet the court, as a general rule, does try to strain a point—especially a jury—in an obvious case of adultery, to find cruelty?—I should answer that most emphatically by saying it depends on the judge. Certain judges most distinctly do not.

5645. Then you get a divergence of opinion in the High Court which is what you fear in county courts?—I think within the last 12 months, say, in the Divorce Court, there have been absolutely two standards, and that is one of the strongest arguments I have on my side, because if you have two judges, who have two standards, what would be the condition if you have 50 judges trying cases of that kind?

5646. You mention the atmosphere of the county court being rather different from that of the High Court, and I think you mentioned it was rather the debtor atmosphere. I think what you meant was that he case was so obvious; that A. proved his case that there was a debt owing him by B.?—No, I went rather further than that. If A. says B. owes him a debt, and B. does not defend, then: give A. what he wants.

5647. Is not that rather the atmosphere of the High Court at the present moment with regard to undefended cases?—No, absolutely not. A man has to prove his case just as strongly—in fact, I am not sure that he has not to more strongly—in an undefended case, because you always have the judge against you.

5648. But he proves, so to speak, his debt just as the other man does?—No, because if A. has a debt against B. and B. does not come, the judge says: "Oh, B. does " not defend; obviously he owes the money; give A. " what he wants." But that is not so in the Divorce Court. If A. sues B. and B. is not there, the judge at once says: "Wait; is this collusion?" That is the first thing—and the judge satisfies himself it is not collusion.

5649. Then it is not so much the court as the county court judge. You do not think he would have the experience to detect collusion in a 10-minutes undefended case that the judge of the High Court would?—It is not only his experience; but the trend of his mind is to give A. what he wants as B. is not there to defend it, whereas the trend of the Divorce Court judge's mind is not so.

5650. (*Chairman.*) Have you ever known a High Court judge stop an undefended case on the ground of collusion?—I do not know that he has said it is collusion, but I have certainly seen the High Court judge refuse undefended cases.

5651. How many?—I have known of two within a few weeks, my Lord.

5652. How many? Personally I can only recollect refusing one or two in 15 years?—I think you will find that during the last few weeks there have been two. Then, my Lord, in the Divorce Court all the cases are brought before the judge by counsel who are practising in that court, and who know collusion is not allowed, and will not lend themselves to collusion. I am afraid that was so obvious to me that I forgot to mention it.

5653. (*The Earl of Derby.*) You are ready to have the county court as being the court in which they are to be tried, but you would say they should be tried by a judge of the High Court who is practically continuously on circuit?—Yes. Naturally it is against my own interest, but I am in favour of it because, to my mind, it is the only way in which you can bring justice to the doors of the poor people.

5654. But the point I was going to ask was this: Would not that make a very long delay in many cases?—I do not think much longer than there is now.

5655. You would not think it would be equally met in another way. You have heard there can be five extra county court judges appointed under the Act?—Yes, I have heard that.

5656. You would not think it would be met by letting those five judges go on circuit, and when not engaged in divorce cases, to assist the other county court judges who are very much over-worked?—Well, I am so against that, that rather than have that I would leave things as they are.

5657. You adhere absolutely to the fact that it must be a High Court judge who tries every divorce case, whether in London or in the county court?—Yes,

on the ground of expense I say the county court. If it were not for that I should say London; if marriage is to be treated as I think it should be treated, the more difficult you make it to dissolve it, or the more safeguards you put round it, the better, in my opinion.

5658. (*The Archbishop of York.*) With regard to your suggestions as to the judge on circuit, you would agree a great deal of the procedure, apart from trying the case, should be conducted in the county court?—I have not said anything about it, but I take it if a case is to be tried in the county court, all would be done there.

5659. But if it was going to be tried on circuit you would agree to certain ——?—When you say on circuit, do you mean at the assizes as they are at present constituted?

5660. No, your special divorce judge?—Going to the various county courts?

5661. Yes?—Well, then it would be all done at the county courts.

5662. The procedure would all take place in the county courts?—Yes.

5663. Then with regard to this interesting point about undefended cases in the High Court, you would agree, would you not, that one reason why it is possible for the High Court to get through so many undefended cases is because the judge has the assistance of a bar which is by experience and tradition certain not to present any case to court about which they are not quite sure from their experience that it is sound?—Oh, absolutely. In the Divorce Court I have myself got cases through in about 10 minutes.

5664. One might assume the same is the case with regard to the solicitors practising in London who submit cases to counsel?—No, I should not go so far as to say that. The solicitor is naturally trying his best, I think, to help his client.

5665. Might I put it this way, that the class of solicitors bringing cases to the High Court in London would be a somewhat higher class of solicitor than might be found practising in all the county courts?—Yes. I would not say that the class of solicitor in London is a higher class man than the solicitor in the country by a very long way, but certainly the class of solicitor who in the ordinary way briefs counsel for divorce cases in London is of a higher class than the solicitors who practise in the county courts alone.

5666. In the county courts would there be, in your opinion, some danger lest a rather lower type of solicitor might get hold of cases and promote them?—Yes, I did not want to say it, but it is so.

5667. With regard to the question you were asked by Mr. Spender, whether there is any particular difficulty in a county court judge deciding matters of fact. In your view, especially if the grounds of divorce were extended, it would not be merely questions of fact, but very difficult questions of degree that would be submitted to the judge?—Yes.

5668 Therefore in the event of any extension of the grounds of divorce there would be even greater room for variety of standard than there is now?—Oh, absolutely.

5669. You mention some possible grounds of extending divorce, but you do not include cruelty?—No, I do not; certainly not.

5670. Nor drunkenness?—Oh, no. In my opinion the marriage tie is far too sacred a thing to be dissolved for either of those two.

5671. Then you would put insanity and prolonged desertion on the practical death?—Yes. Well, I am not sure. Insanity is certainly practical death. Then confinement in a lunatic asylum in commutation of the death sentence; there the man has been condemned to death and the Royal clemency has said the prisoner may live in an asylum.

5672. You would not extend the grounds for divorce beyond what could be constructively described as death to one another?—Well, I have said wilful desertion for five or seven years—where there can be no doubt, possibly for reasons we do not know at at all, that there is an absolute refusal to live with the other spouse.

5673. (*Lady Frances Balfour.*) I think you have said you would not give relief to the wife for what has been called accidental acts of adultery by the husband?—That is so.

5674. Do you find it easy to prove cruelty?—If a husband has been cruel to his wife it is very easy to prove it. It is where you have trumped-up cases that it is not easy.

5675. But is it not likely to be trumped-up, if it is necessary to prove it?—But then either there is cruelty or not.

5676. You do not define the possible effects of infidelity on mind and body as cruelty?—Not the ordinary kinds of infidelity.

5677. But the accidental cases, as they have been called?—No, I do not think so.

5678. You do not think it inflicts an injury on the mind and body of the wife?—I think, naturally for the moment, certainly it inflicts mental cruelty but I think it passes away in the case of most women.

5679. Passes away when it is a question of physical health?—I do not think the effect of the knowledge does cause the loss of physical health in most cases. That it brings mental pain at the time, I agree.

5680. A wife's capacity for forgetting, prevents her suffering?—For forgiving, I should rather say.

5681. (*Sir Lewis Dibdin.*) I gather the basis of your evidence is that marriage is too important a matter for the severance of it to be made easy?—Yes.

5682. But that such difficulty as there should be in the process should not turn on the poverty of the parties. I mean that the ease or difficulty of getting a divorce should not depend on whether the parties have or have not money to pay for divorce proceedings?—Naturally. I cannot conceive that anybody would.

5683. The reforms you are suggesting are based chiefly on this consideration, to give the poor men as complete a remedy as the rich have now?—That is absolutely my position.

5684. And in order to do that, you think that divorce ought to be dealt with in the case of a poor man as it is dealt with in the case of a rich man, by a High Court judge—by a judge of the highest attainments and experience?—Yes.

5685. Have you had any experience with regard to trial by jury in divorce cases?—Oh, yes.

5686. What is your view as to that?—Of course you only have trial by jury when a case is contested. The great majority of cases, as you know, are undefended, and then you have no jury.

5687. (*Chairman.*) Might I remind you, if Sir Lewis will forgive me, you must have a jury to assess damages in an undefended case?—I was coming to that, my Lord. If a case is defended to this extent, that the man alleges adultery on the part of the co-respondent, and he wants to obtain money from the co-respondent, then the case is defended to that extent that the man has to pay damages, and you have a jury to assess the damages.

5688. (*Sir Lewis Dibdin.*) But I understand one suggestion before us is, not only that undefended cases should be tried in the county court, but that the cases of the poor, defended or undefended, should be?—I am aware.

5689. I am not dealing with undefended cases, but with defended cases?—In the county courts?

5690. Yes?—Yes.

5691. Is it your view that a county court jury would be an adequate tribunal to try a divorce case?—I have not the greatest opinion, I am afraid, of county court juries, I have had so little experience of them, but I do think this, that if you had the safeguard of a divorce judge coming down from London, with his great name and prestige, that he would influence or over-awe that jury to such an extent that I think you would get practical justice even from a county court jury.

5692. But you do not think there would be the same control over them with an ordinary county court judge in the district?—That is so.

5693. Or even if it were a county court judge appointed to deal with such cases?—I still adhere to that.

5694. I suppose the objection in the one case would be greater than in the other. The county court judge specially appointed would be more able to cope with those cases than the county court judge in the district, who would have less experience?—I do not quite admit that. It is not only experience; but it is that you are putting divorce on the same category as the little two-penny-halfpenny recovery of a 2*l*. debt, and you are going to have the same man to try them, and I think that is absolutely bad, and you would have collusion rampant.

5695. In regard to undefended cases, do you consider the presence of counsel in the Divorce Court an essential safeguard against collusion, so far as any safeguard exists at all?—If I were not counsel I should say yes, but one does not like to ——

5696. But the presence of counsel in such cases is an important safeguard against collusion?—I think it is myself.

5697. You are aware that the Lord Chancellor's Committee, which presented a report last year, reported that the presence of counsel was, in their opinion, essential in those cases?—I know they did.

5698. They report, "It is essential to the proper "administration of justice in these cases that the "judge should have the assistance of counsel, on the "ground that it would be a tax on the judges to watch "these mostly undefended cases without reliable help, "which could not be expected from local prac-"titioners"?—That is so; because, as I said, a solicitor naturally wants to help his client. Some of the solicitors practising in some of the little county courts, I do not think if you probe them to their innermost souls, would admit that collusion is at all a bad thing.

5699. But, without going into details, you concur in that recommendation of the Committee?—Yes.

5700. (*Mr. Brierley.*) Just one matter about equality of the sexes as to adultery. We have heard some witnesses say that juries, and even judges, are rather glad to find a case of cruelty where the wife sues for divorce, and rather strain the law in order to do so?—I think I did answer that question in this way: whereas some judges might, other judges certainly would not.

5701. Do not you think the fact of having to prove cruelty as well as adultery sometimes works inequality with woman?—Would you repeat that?

5702. Does not proving cruelty as well as adultery cause there to be inequality between women. I mean in this way. Take an isolated act of adultery, which has been called an accidental one. Say a woman of strong mind and constitution might only feel resentment and disgust without injury to her health being occasioned, whereas a more delicate and nervous woman might suffer injury to her health by the same matrimonial offence?—Yes.

5703. Well, do you consider that is quite a just condition of things?—I am afraid I should like to answer you by asking a question, Can you ever get perfect justice?

5704. But you are aware that the state of the English law in that particular matter is somewhat exceptional?—Yes, I agree; but I think that the cases you have in your mind are so few that, for practical politics, one may put them out of consideration.

5705. Well, your experience in these matters is greater than mine. I should have supposed rather they are not very few?—Yes, I think they are. Take the woman of the nice fine feelings. Well, you call it accidental adultery——

5706. I did not call it accidental adultery?—Well, it has been so called. Has it been done under the influence of drink?

5707. I do not think that much matters?—Yes, I think so, with respect, because if a man has done an act when he was not responsible for his actions, I do not think if that case was put to a woman it would have the effect that you suggest it has in some cases.

5708. I am only suggesting that the same act would give a different remedy according as the wife happened to be of a more or less, shall we say, nervous disposition?—Of course naturally it has different effects upon different women.

5709. Do you consider that is a just condition of things?—As I say, you cannot have perfect justice. I think it is as near as you can get it.

5710. (*Mr. Spender.*) May I ask, do you object to permanent separation orders being granted by magistrates?—No, I do not object to them if the parties are really asking for them. I do not know whether you were here when I said what has happened." A woman has gone to a magistrate who wanted relief, and he has given her so many shillings a week and a separation order which she did not ask for.

5711. But the police court has given permanent separation orders?—That is the only kind they can make. They cannot give temporary ones.

5712. Do you think it is right for a police magistrate to give separation orders and not for a county court judge to give a decree for divorce?—Personally I should much sooner have the administration of separation orders in the hands of a magistrate than of a county court judge. As I said before, the county court is the court people go to for a twopenny-halfpenny debt. They do not go to the police court for that.

5713. They go to the police court for many things which are ——?—But for things which leave an impression. I mean they are not familiarised with the police court.

5714. Do not you think the judge of the county court holds the position which is the more distinguished one?—Yes, he may hold a distinguished one, but he is the judge, in the eyes of the poor people, you go to when you want relief if somebody will not pay money, but the position of the magistrate, who is there to punish, is a far more important factor in their eyes.

5715. You think it is a matter of sentiment?—It is a matter of sentiment, but I think it is so.

5716. (*Mrs. Tennant.*) You would leave the law exactly as it is between men and women?—No.

5717. I mean on the question of adultery?—On the question of adultery, yes.

5718. You do not distinguish, as one witness did, between continuous adultery and what he called accidental adultery?—Of course these terms are new terms which have been invented almost during this Commission. May I ask whether by continuous it is meant that the man is continuing to live with his wife, but is keeping up a separate establishment?

5719. That would be one definition; but I want to get at the difficulty of defining continuous adultery?—Yes, but I must know what you mean before I can answer the question. If by continuous adultery you mean he has left his wife, then she is able to get it after six months, I suggest.

5720. No, I do not mean that, nor do I think that was in the mind of the witness who described it as continuous adultery?—So many witnesses answer questions before they know what they are answering, and I should like to be clear.

5721. One definition was that he still lived with his wife, but repeated these acts of accidental adultery?—Continuously committing them. I would not give a divorce for that. I think, after a while, he would either desert his wife or probably be cruel to her. If he commits adultery with a servant in the house, that has been held to be legal cruelty; if he brings a woman with whom he is committing adultery into the house, that is held to be cruelty. I think we lawyers have strained the law as far as we can to aid women.

5722. There were two cases suggested; one you have described, and another where the husband, still living with his wife, has a separate establishment?—Yes; well unless he either insults the wife by bringing women into the house, or the adultery is committed with a servant in the house, my answer would be no.

5723. You do not think he is insulting his wife by keeping a separate establishment?—I do not think he is "insulting" her at all.

5724. (*Chairman.*) There are two or three points suggested by your answers. You said the county

court is regarded as a place where a twopenny-halfpenny debt would be collected?—Yes.

5725. Have you recollected that they have an extensive Admiralty jurisdiction?—I know some of them have.

5726. And bankruptcy, unlimited?—Yes.

5727. And that 90 Acts of Parliament confer different jurisdictions on them?—Yes, I dare say, my Lord.

5728. Agricultural holdings, unlimited?—Yes, I know that; but I am talking of how it is looked upon by the poor.

5729. We are dealing with the calibre of the court?—No, I am dealing with the opinion people have of the county courts.

5730. But we are dealing with the calibre of the court?—Well, I want divorce not to be treated in the way it might be treated.

5731. The treatment depends on the judge, not on the opinion of the people?—I am aware, my Lord.

5732. Do not you think, apart from any principle of concentration, the county court judges could perfectly well do this work?—No, my Lord, I do not.

5733. Why?—Because, as I have already said, I think the trend of their mind is to give what is asked for if the other party does not oppose.

5734. The trend of all the county court judges?—Well, practically all.

5735. Then there is one other point on this question of a husband's adultery. You have, I think, suggested that a case of drunkenness with misconduct following would be one in which a wife might be likely to forgive him?—Yes, my Lord.

5736. Is not that a class of case in which the probability or possibility of acquiring a loathsome disease is more likely to occur than where a selected person is lived with?—Yes, my Lord.

5737. Well, does not that suggest to you that many of those cases might be considered in which the wife might have the option of saying if she would institute a suit, even though not treated with violence?—Of course, as your Lordship is aware, if that disease is communicated to her by the husband ——

5738. I know that. I am putting where it is not communicated but where acquired, which is an enormous possibility in a case of what is called accidental adultery with any prostitute?—One has to draw a a line; I should not ——

5739. The difficulty I have is in seeing why a line should be drawn at all. Why should not the woman have an option to determine for herself whether it was a case for divorce or not, as the man has?—There are reasons which I am sure the Commission knows well. There is the possibility of children in one case, and a husband having to keep them.

5740. And there is the suggestion made here that other people would have children introduced into their homes?—I know that; but that was too laughable for words, because we are not trying the case of *that* family but of *this*. I could not understand the answer.

5741. We only want to get your views. The difficulty one has is to see the wife's position in a case such as I have been suggesting where the husband has committed an act and has acquired a disease, but not given it to her. However, you will give no option there?—No, I should leave the law where it is.

5742. On what ground do you justify that. Might I remind you the ecclesiastical courts, in giving the separation, treated both sides alike?—Yes, and the woman can have separation for it now.

5743. Yes, but one wants to see why there should be any material distinction between the tie being dissolved altogether and practically dissolved by separation?—Because it has been said—and, I hold, with truth—that the effect on the woman and the effect on the man is different.

5744. That is equally true in a separation case?—I agree, my Lord.

5745. But it is the law, and has always been so, that one act by a man would entitle the woman to a separation?—Yes.

5746. How do you differentiate it from divorce under these circumstances?—Divorce is much more serious than separation.

5747. Why?—In many ways. It is different from the point of view of the State, it is different from the point of view of the children, and it is different from the point of view of the parties themselves.

5748. It is often said separation is a greater punishment than divorce?—I have heard it said so; but I do not think you would always get the guilty party to agree.

5749. But on what ground of principle would you differentiate between not granting a divorce for one act, even in a serious case such as I have put, and granting an order for judicial separation in that very case?—Well, if I framed the law, I might not have given separation for it; it has always been the law, and I do not see the necessity for extending it.

5750. I was not asking for the necessity, but the principle on which you differentiate between the two?—Well, I think the reasons that cause men to commit that indiscretion are greater in their case than they are in the case of a woman, and therefore I do not think they ought to be punished in that way.

5751. Excuse me, but that is not answering the question in the least. That would be a ground for saying there would be no judicial separation in such a case?—No, it is punishing them to a certain extent, but not to such a great extent.

5752. But perhaps some do not think that should be so?—Well, my Lord, why should there be hard labour for some offences and penal servitude for others?

5753. We have had many cases where the respondent has looked upon it as a greater hardship to have a judicial separation than a divorce?—Well, he may.

5754. The other point I want to ask you is this. Separation as at present made by the magistrate is permanently so?—Yes.

5755. And that is a very serious thing, is it not?—Yes, very.

5756. I agree with you that the object of all legislation should be as far as possible to keep the marriage tie as full of sanctity as possible; but the legislation has given the magistrates power to make separation orders permanently?—Yes.

5757. For persistent cruelty, amongst other things?—Yes.

5758. Therefore they have practically power to dissolve the marriage in the sense of completely separating the people as much as they did in the old ecclesiastical days. Is that so?—That is so.

5759. Then what ground would there be for objecting to a local tribunal like the county court giving what some would regard as a lesser relief, though it was dissolving the tie? If you have local magistrates at the petty sessions who are not trained lawyers pronouncing orders for permanent separation—unless they return—which practically separate people for their whole lives, what is the ground on which a legally trained tribunal should not be allowed to make that a complete dissolution?—Your Lordship has answered the question to an extent by saying "unless they return"; many do return, but if their marriage was dissolved they certainly would not return then.

5760. But that is no objection to the tribunal?—That is the first thing. The reason I put it that way is that I do not think a separation is anything to be compared with the dissolution of the marriage.

5761. Why not?—Because in the one case they return and in the other they do not.

5762. But they need not? No, I am aware they need not, but one has to take it practically. Practically they do not return, whereas practically in one case thousands of them do.

5763. But the exercise of the jurisdiction I am upon. In the one case the exercise of the jurisdiction is entrusted to petty sessional magistrates, who may have the power to completely separate the people though not to dissolve the tie. But you think it would be objectionable that the county court trained lawyers should be able to dissolve the tie?—Yes, I do.

5764. Then you were asked about the practitioners of London being possibly of a different character from those who were likely to practise in the county courts?—Yes. It was a difficult question and not very clearly put.

5765. You are aware that the London practitioner acts as agent in London for all sorts of solicitors?—Yes, that is so.

(*Chairman.*) I have to thank you for the evidence you have given.

Mr. ARTHUR BLOTT called and examined.

5766. (*Chairman.*) You are a solicitor practising at 39, The Broadway, Stratford, East?—I am.

5767. And you are the honorary secretary of the Poor Man's Lawyers' Association?—Yes.

5768. And senior member of the legal aid committee of Mansfield House University Settlement in Canning Town?—Yes.

5769. I think you joined the legal aid committee, commonly called the Poor Man's Lawyers' Department, of Mansfield House Settlement in 1892?—I did.

5770. And you have been connected with it ever since?—Yes.

5771. That is 18 years?—Yes.

5772. I think a number of legal gentlemen—four or five—sit usually every Tuesday to hear the cases of poor people needing advice?—Yes.

5773. When you joined there was one barrister and yourself, and the average number of cases advised upon each week was about 30?—It commenced at 30. It is now 60 or 70.

5774. You have had several thousands of cases before you in this period of 18 years?—Yes.

5775. Do those include a large number of cases in which questions of divorce and separation have come before you?—We tabulate them under the head of "husband and wife." I have an analysis of the cases for 1908 and 1909. Out of a total of 2,154 we tabulated, 207 are cases between husband and wife. A great many of those would involve questions of separation or divorce—most of them, in fact. In the year before the numbers were slightly higher. The number tabulated under the head of "husband and wife" was 387.

5776. That is quite sufficient to show that you have a very large experience?—Yes.

5777. Then the association as at present constituted was founded in 1900, was it not?—Yes.

5778. What was it before that? A legal aid committee?—It did not exist before that. The legal aid committee connected with the Mansfield House Settlement existed, and then on hearing that a number of others were so engaged, we called them together and formed an association.

5779. A combination?—Yes, a combination of them.

5780. And you give advice to all these poor people?—Yes.

5781. Then you speak to-day as a representative of your body?—Yes.

5782. Of the association?—And also incidentally of the Mansfield House Legal Aid Committee.

5783. You do not represent the Central Legal Aid Society, do you?—No, I am a member of it, but I do not represent it.

5784. Might we ask what settlement you do represent?—The Mansfield House University Settlement only, and the Poor Man's Lawyers' Association, which is a combination really of all the different departments of the various settlements.

5785. Then you called a meeting of your association to discuss the subject about what you are going to give evidence?—I did.

5786. I think you passed resolutions at the meeting?—Yes.

5787. The first question submitted to your association was relating to the county courts?—Yes.

5788. What was the resolution that was carried?—That "Jurisdiction in divorce including *in formâ* "*pauperis* procedure be given to the county courts "including the Metropolitan county courts in cases "where the goods of the petitioner are of less value "than 100*l.* and weekly wage not exceeding 2*l.*" Then in addition, "That special days be set apart for the "hearing of such cases"—where practicable, of course, and "That appeal be allowed to the Divorce Court, and "the Divorce Court to have power to remit to the "county courts."

5789. That concentrates your suggestion about county courts?—Yes.

5790. I have a list of the settlements. Which of those are represented by your association (*Handing a document*)?—I may say the representation is rather a vague and indefinite one. If one of the solicitors or counsel attached to any of these settlements is a member of our association and pays the subscription, we call that an affiliation between that settlement and our association.

5791. Well, can you tell us which of those you are justified in expressing views for?—They were all called to the meeting, and therefore I may say I am representative of nearly all of them. Mansfield House; Bermondsey Settlement; Browning Hall; Cambridge House; Passmore Edwards' Settlement; Maurice Hostel; Broadplain House, Bristol; University Students' Settlement, Glasgow; Neighbour Guild Association, Sheffield. The rest do not concern me, I think.

5792. So that your evidence is pretty largely representative of the settlements?—Yes, I may say we represent practically 23 centres in London and the metropolis, and seven in the provinces.

5793. And may these be taken as parties to your resolution?—Two-thirds of them may.

(*Sir Lewis Dibdin.*) Might we have the numbers, or whether it is unanimous or not?

5794. (*Chairman.*) Was this unanimous?—I cannot give the numbers from memory, but I think we were unanimous, or practically so. Perhaps there were one or two dissentients. The meeting was not a large one, I may say—perhaps a dozen or 14.

5795. Then the question is whether the words: "goods of the petitioner" should be "the property of "the parties." That is a question of whether the joint property should be considered or only the petitioner's?—Yes, the association passed the resolution as I read it. At an informal meeting of the Mansfield House Legal Aid Committee we considered that the resolution was wrong in that respect, and we suggested an alteration: "the property of the parties" to be put for the words "goods of the petitioner."

5796. That means joint property?—Yes.

5797. That is a detail we need not criticise too closely now. The point which was in your mind was limited jurisdiction?—Yes.

5798. What were the grounds on which you all came to that conclusion—you say unanimously—about giving jurisdiction to the county courts?—We discussed the possibility of other courts—the police courts and district registries—and we came to the conclusion the county court was the most available and most convenient; most suitably constituted.

5799. And inexpensive?—And inexpensive.

5800. I do not know that we need go through the figures that you have given us here; we have had them so often before. But I take it from your experience as a solicitor that the saving in the county court would be very large as compared with the High Court?—Yes. I have not had such a very large practice in the county court, but I have given figures here which I think would indicate what might be regarded to be the minimum expenditure on a simple undefended divorce case.

5801. In the county court?—Yes.

5802. What do you put that at?—At the bottom of page 3 I suggest that a 10*l.* note should cover it. That allows court fees 10*s.*; one fee to include all court fees; allow for two or three witnesses where the case is to be heard in a county court easily accessible 2*l.* That leaves seven guineas to the solicitor for acting in the matter throughout. I think there are a number of solicitors who would take up a simple case at that.

5803. That would not include anything for counsel?—No, that would mean either an extra fee for counsel or so much less for the solicitor. The meeting was strongly of opinion that the cost ought to be reduced to something like that standard.

5804. For the poor?—Yes.

5805. By some means or other it should be got down to that?—Yes, we thought 10*l.* was an accessible figure to the average working man, or, at all events, he would do something to get somewhere about that amount.

5806. And you think 40*l.* or 50*l.* is more than it is possible for a man of that class to find?—Yes, I have said 25*l.* to 30*l.* to people who have asked me, and sometimes perhaps even 20*l.* in a very simple case, and they have said that is totally prohibitive.

5807. And then the husband may have to provide for the wife's costs, which accentuates the difficulty?—Yes.

5808. Then your next note is as to proceedings *in formâ pauperis*?—Oh, yes, where it is impossible for the party to raise 10*l.* then we say *in formâ pauperis* procedure should be given in the county court to persons not possessing 25*l.*

5809. Now another point. Do you think that the metropolitan county courts should be utilised as well as the country courts?—Yes.

5810. Would you give us your reason for that, because it has been pointed out that people in London have approximate access to the High Court?—Yes. In the first place, on the ground of expense, my Lord. The fees of the court run from 5*l.* to 5*l.* 10*s.* or 6*l.*, or even upwards; and that is a very serious item when you have only 10*l.* to spend. Then, if you are to retain counsel, you cannot give him less than three guineas and one, which is 4*l.* 11*s.* 6*d.*, and then the whole of your 10*l.* is gone without anything for witnesses or the solicitor.

5811. Would it be your opinion that in the county court the solicitor should have the right to conduct these cases?—Yes.

5812. It is suggested in the report referred to that it is not desirable?—I think it is quite desirable. Of course there are solicitors and solicitors, and there are a certain class perhaps—a limited number, I hope—who would take up these cases rather too readily and push them through too earnestly. But I do not think there is much ground for great fear with regard to that.

5813. You do not think there is much in that?—No.

5814. You think this question of costs would be equally, or at any rate to some extent, applicable as between the High Court in London and the local county court?—I do not quite understand.

5815. It was suggested in the report that has been referred to that the county courts in London need not have this jurisdiction, though it might be reasonably given in the country?—In order to justify that statement you must abolish the fees in the High Court altogether, or reduce them to a nominal sum like 10*s.* And then you must get counsel to take the matter through gratis. In this way you would put the Divorce Court on the same footing from the point of view of expense, very much as the metropolitan county court.

5816. Then you think the London people might go to the London county courts?—Yes. I should even then be in favour of giving the jurisdiction to the London county courts.

5817. Why?—Well, the working man is afraid of the Divorce Court in London very often. He would not be so terrified in going to a county court. That would be a deterrent in many cases where justice requires the case to be tried.

5818. Then you are creating a distinction between country county courts and metropolitan county courts?—It would be a temptation to people to move to the home counties and get their cases tried more cheaply if that were not so.

5819. What is your view of the objection that has been made to the county court judges taking this jurisdiction, and the suggestion that the jurisdiction be conferred in the country, it being exercised by a High Court judge travelling round for the purpose?—The proposal to send a High Court judge on circuit through the country strikes me as being a rather inconvenient one. I think in places like the metropolis, where county courts are thick upon the ground, it would be found convenient to appoint a judge having the status of a county court judge to sit on special days—we assume divorce cases are to be tried on special days—to try divorce cases. That strikes me as a convenient arrangement for a place like the metropolis. Also, in the more densely populated parts of the United Kingdom the same thing might be done. But I should not suggest sending a special county court judge to try perhaps one or two undefended cases.

5820. There would be one, say, in London, taking the whole of the metropolitan work?—Yes.

5821. And similarly in the other large centres?—Yes.

Adjourned for a short time.

5822. You were giving us your views about the county courts and the High Courts. Do you consider the county court judges would be able to deal with these cases adequately?—Oh, yes, I can see no reason why they should not be quite competent. If they can deal with a difficult running down case in the street, I think they could deal with divorce cases.

5823. And then there would be an appeal to the High Court?—Yes, and that would be a safeguard, and it would induce the county court judge not to grant divorces too freely, and he would know if he refused one the parties could go to the Divorce Court as a Court of Appeal.

5824. Your evidence is chiefly directed to undefended cases so far. About a defended case you have something to say?—I do not think I have much to say about defended cases. I do not see why they should not be fought out in the county court.

5825. You think they would be exceptional?—They would be quite exceptional. Very often they would not be defended because a party could not afford the defence.

5826. Then, with regard to the second question, the question relating to judicial separation. Did your society pass a resolution about that?—We passed a resolution that the Summary Jurisdiction Married Women's Act of 1895, section 4, requires amending, so as to make it unnecessary for a wife to leave her husband before applying for a summons against him on the ground of cruelty, or failing to maintain her and her children.

5827. Do you find that in practice often debars a wife from getting an order when otherwise she would apply for one?—Very often. We find the wife has a great reluctance to bring matters to a crisis by leaving the husband in that way, and it is very often want of means to enable her to take lodgings for a week or more; and unless she has parents to go to she often finds that an insuperable bar.

5828. On this subject of judicial separation, have you, in your experience, coupled with that of your colleagues, been able to express any views as to the result that arises from separations?—We did not pass any resolution, but were of opinion, I think almost without exception, that these judicial separations lead to immorality. Parties separated find they want companionship, or a woman often wants support, and it leads to immoral connections.

5829. And you think that might be remedied in what way?—I should grant judicial separations in a very few cases, and then, I think, only for a limited period. That is my own personal view.

5830. Do you think there is a demand amongst the poorer classes for a better opportunity of bringing these cases before the court?—For divorce?

5831. Yes?—Oh, yes, certainly. Very often we get asked: could not we get a divorce; could not we get a divorce *in formâ pauperis*; if not, what would it cost; what is the very least you could carry it through for, or questions of that description.

5832. You make a suggestion which I am not sure I appreciate. Perhaps you will tell us what you mean by that. Your passage begins "A suggestion that living apart"——?—Oh, one of my friends made a suggestion that living apart under a judicial separation

should be counted as so much desertion for the purpose of proceedings in the Divorce Court. That is, when the parties were living apart under a judicial separation, and the adultery was proved and a separation under a magistrate's order had lasted for two years, that the case should be complete for a divorce.

5833. That is to say, that that case which has been decided on the point or the law result of that case should be altered?—I do not know the case your Lordship refers to, but the suggestion amounted to this that the time during which the parties lived apart under a judicial separation should, for the purpose of an action for divorce, be counted as so much desertion.

5834. Yes, well, that is the case I mention?—I do not know the case your Lordship refers to.

5835. Now, with regard to the third question on which I wish to ask you—about publication. Did your association come to a conclusion about that?—Yes, we passed a resolution "that reports on divorce and "matrimonial cases heard in the county court be not "allowed to be published in the press; this not to "apply to the mere statement of result or judgment."

5836. What is the ground for passing that resolution?—There was a little divergence of opinion amongst the members present, but it was carried by a substantial majority. We thought it did not conduce to the morality of the country to have these cases published in the petty local press. Of course, we had in our minds divorces in the county court which we thought might be numerous, and perhaps some local papers would fill columns with details that would not conduce to morality, and it would pander to a taste for low-class literature by the working classes themselves; and they would wish to know what their neighbours were doing.

5837. You do not think it would be wise to allow it in those circumstances?—No.

5838. What is your view with regard to its being a deterrent to immorality?—Some of us thought that the publicity of these reports was a deterrent; others did not think so. I think the majority were against the reports and did not think much of the deterrent effect.

5839. You say your colleagues at the Mansfield House Legal Aid Society dissented from the resolution?—Yes, the Mansfield House Committee were in favour of the reports on the ground of the deterrent effect they might have.

5840. Can you give us any idea what the respective numbers on the question were?—No, I might have come prepared with figures, but I do not know that a minute was made. At the association meeting I should think the majority was about two-thirds to one-third. At the little meeting of the Legal Aid Committee at Mansfield House the figures were about reversed.

5841. Then, "with regard to any desirable amendment of the present law," you passed the following resolution?—Yes: "Absence of either party and being "unheard of for five years, in the same circumstances "as absence for seven years is now a plea in defence "of a criminal charge of bigamy, be a ground for "granting a divorce."

5842. Does that include or not the case of wilful desertion?—That does not include the case of wilful desertion. Wilful desertion I suggest later on——

5843. We will come to that later on?—Yes.

5844. Will you give us the grounds on which this last resolution was come to?—Well, we have been several times asked—generally by women whose husbands have gone abroad and not been heard of for a long time—whether they could safely marry again? We have told them the law, and it seemed to us rather hard lines that they should run any risk of having their children by their second marriage made illegitimate, when they had all the materials that morally entitled them to a divorce.

5845. The substance of it seems to be that the same ground as is accepted as a defence to bigamy might be a ground for divorce?—Yes. There is the innocent presumption of the death of the absent husband.

5846. But you reduced it from seven years to five?—Yes; we thought generally five years is rather a large slice out of anybody's life.

5847. Seven years was in different times?—Yes; we live faster now.

5848. Means of communication are better and quicker. Is that what you mean?—Yes.

5849. Then about wilful desertion?—That "wilful "desertion by either party for three years be a ground "for granting a divorce." Where you can prove the intention of the husband not to come back, it seems that three years is quite long enough to put that intention to the test. If the husband will not come back in three years, he never will come back.

5850. Are those common cases?—Fairly common, I think.

5851. Of desertion without being able to prove anything else?—Yes, fairly common. Not very often, but we have had them occasionally.

5852. Then the next one is about insanity or confinement in an asylum?—The resolution we passed was this: that "incurable insanity or confinement "in a lunatic asylum during the King's pleasure as "a commutation of a death sentence be grounds "for granting a divorce." We have had cases—not frequently—where husband or wife has been incurably insane, and it has seemed a very great hardship on the other party (especially if they were young) that they cannot marry again.

5853. Then you go on to deal with technical insanity. Perhaps you will explain what you mean by that?—We had in our mind the case of a man who, for some reason or other—possibly threatening the life of a judge—who had been sentenced to a lunatic asylum during the King's pleasure, which meant for life, perhaps. A case of that description ought to be treated as though it was incurable insanity, we thought.

5854. Your colleagues at the Mansfield House Committee deleted the word "incurable"?—Yes; the majority of those present thought any serious case of insanity should be a sufficient ground for divorce.

5855. Even though the insanity was for a very temporary period?—No; but something short of incurable they thought should justify a divorce.

5856. Then you mention that you moved a resolution as to the effect of a sentence for penal servitude. Will you tell us about that?—I moved that resolution myself, and strongly supported it, but my colleagues at the meeting of the Poor Man's Lawyers' Association thought it would be a distinct hardship, and it was eventually rejected by a small majority. But the view of some of us who supported the resolution was this, that anybody whose spouse was sentenced to a term as long as five years' penal servitude should be justified in getting a divorce if they thought fit.

5857. The next point is that you think the two years of desertion at present existing should be cut down to one?—Yes.

5858. That is desertion coupled with adultery?—Yes, we all agreed to that. We could not see why there was any particular virtue in two years which one year would not possess.

5859. Then, with regard to practice *in formâ pauperis*, you have a resolution on that?—Yes, the resolution reads thus: "That the solicitor for a pauper "petitioner or respondent be allowed to accept costs "(or to take security for the same) from his client, or "to recover same from the opposite party or the "co-respondent, and similarily counsel be allowed to "accept fees, the present rules notwithstanding."

5860. What is the point of that?—As the law *in formâ pauperis* at present stands, a solicitor if he takes the case through from beginning to end may not accept one penny of "profit costs."

5861. From the other *side*?—From the other side, or even from his own client if the client through some unforeseen accident becomes able to pay him, and we thought that was a hardship on a solicitor; and we thought the same applied to counsel.

5862. You think that militates against solicitors and counsel taking up cases?—Very much, I think. We generally used to be under the impression that a solicitor who took up a case for a pauper client so far

as to state the case in writing and to obtain the opinion of counsel and the affidavit and lodge it in the registry, would be chosen by the court to carry the case through, thereby inflicting a double penalty on him. But I understand the practice of the Divorce Court is not so now; but that has been a deterrent in the minds of several solicitors I have known for some years.

5863. I think we will pass Scotland, as we shall have more direct information about that. I will pass to your last resolution?—"That it is advisable that the "court should assign solicitor and counsel to the "pauper petitioner, but only with the consent of such "solicitor and counsel, it being futile to expect the "parties to carry their own cases through the court "without legal assistance."

5864. That almost speaks for itself?—Yes, I think what we had in our minds was that it was very objectionable to allow parties to conduct their own cases. Very few of the working men we give advice to could be trusted to carry their own cases through. They would drop it and not do it. They have not the intelligence or enterprise in most cases.

5865. And you sum it up by saying, "Nor would it "be advisable that they should waste the time of the "court in bringing badly prepared actions. The ques- "tion of gratuitous assistance to paupers is a complex "one—possibly the best solution would be the assign- "ment of a solicitor and, if desirable, counsel by the "court and the payment to them of a fixed fee or "taxed costs by the Treasury"?—Yes.

(*Chairman.*) Of course, they will have something to say to that.

5866. (*Sir Lewis Dibdin.*) I gather you are in favour of the extension of the grounds of divorce in several particulars. I want you to consider the case of desertion. You are in favour of a divorce being granted where a party has been guilty of wilful desertion for three years?—Yes.

5867. Does that mean when the one who has deserted has deserted without collusion with the party left behind?—Yes; there should be some proof of an intention on the part of the deserting party not to come back.

5868. Supposing he says to his wife before he goes, "I am going away and I am not coming back again" —if it is a man. Do you think his absence for three years, in that case, ought to be a sufficient ground for divorce?—Yes.

5869. You do?—Yes.

5870. Then I suppose it would be perfectly possible for a man and wife who had got tired of one another to arrange for divorce by means of desertion?—Yes.

5871. You face that?—Yes.

5872. Do you regard that as in the interests of the State? I think you attach weight, do you not, to the maintenance and sanctity and permanence of the marriage tie at a high level?—Yes.

5873. Do you regard such a change in the law as you propose as likely to promote that object?—I think there are cases in which it might lead to collusion, but, on the whole, I take it, it would be for the benefit of the community.

5874. That, where parties want to get a divorce, they should be able to do so by separating the one from the other for three years?—Yes.

5875. Now, with regard to insanity. I think you, yourself, are only in favour of divorce where the insanity is incurable?—I think, if is there any reasonable chance of the insanity being cured, it should not be a ground of divorce.

5876. Some of your colleagues on the Mansfield House Committee take the opposite view?—Yes.

5877. The majority?—Yes.

5878. Perhaps it is not fair to ask you as to their views, but you represent them. Would not that lead to extraordinary results if insanity which was not incurable (that is to say was curable) was a ground of divorce?—I think, in the interests of the legal aid committee of Mansfield House, I should say that their idea was—though it is not clearly expressed—that something short of incurable insanity should be a ground for divorce; that is to say, if there was a reasonable possibility of the insanity being cured, they would not be in favour of granting a divorce.

5879. It is rather difficult to draw a line between insanity which may be cured and insanity which is not technically incurable, yet still persistent?—I suppose it is. I am not an expert on the subject.

5880. With regard to penal servitude. You are in favour of divorce for a long sentence?—For a long sentence.

5881. Well, do you think that is really fair to the convict that there should be that aggravation of his sentence?—I think it might be in the majority of cases (and we must really look at the interests of the majority, I think), it is a greater hardship on the spouse who is still at liberty to be tied to one who is in prison for five of the best years of his or her life.

5882. You think the balance is on that side?—Yes.

5883. Speaking generally, if your suggestions were adopted, they would, of course, make divorce not only easier, but it would make it possible on many new and different grounds?—Yes.

5884. What relation have the suggestions that you make towards the religious teaching of the New Testament; do they, in your view, agree with that teaching or otherwise?—I do not think I could express an opinion on that subject.

5885. May I take it your evidence is given quite apart from the religious aspect of the matter?—Yes, I think you may.

5886. You do not desire to lay any stress on that?—No.

5887. (*Mrs. Tennant.*) You say that your experience and the experience of your colleagues is, that separations frequently lead to immoral life. Have you any figures to show what proportion of cases come together again?—No, we have no figures at all to show that. We make rather meagre notes, and the parties come to us when they are in a difficulty; but when the difficulty is got over, as a rule we do not hear anything more of it. We often have cases where the wife comes to us and asks us if she could not get a separation, and then it turns out she has already had one and has forgiven her husband, and the parties have come together again; then she finds she has made a mistake in being so forgiving, and she wishes to get a fresh separation.

5888. Then, on the other point of insanity; do you know if the element of intermittent insanity was considered in the discussion of that resolution?—No, I do not think we mentioned that specially; I think we confined ourselves to insanity of a serious nature and permanent insanity. I do not think we went very deeply into the question, at all events, of intermittent insanity.

5889. (*The Archbishop of York.*) You said in your proof—and I was much interested by what you said—that you thought practically the great majority of cases that are likely to come before the county courts would be undefended cases?—Yes.

5890. What would your view be of the possibility of that in itself being a danger? Would it not mean that a large number of persons would connive at one another's offences, and that, therefore, there would be no defence. In that rank of life of which we are mainly thinking, there is no very strong opinion about the committal of these offences; would it not be very natural when they get tired of one another to arrange?—Yes, it might have the danger of leading to collusion.

5891. Connivance, rather than collusion, is it not?—Yes; I do not see myself you can have any safeguard against collusion.

5892. I mean connivance rather than collusion?—The difference is not very practical, is it?

5893. Oh, yes, the difference is very real. It has often been rather forgotten by witnesses; but collusion, I understand, is an act of fraud on the court by the concealment of evidence or the production of false evidence. Connivance is when the parties mutually agree one or other shall commit an act in order that they may be relieved from one another's society?—

I think with regard to connivance there is some danger.

5894. And if a number of undefended cases were brought in county courts all over the country, would it not be a danger that it might suggest to large numbers of persons in matrimonial difficulties that there was an easier way of getting rid of their respective spouses?—The fact that the jurisdiction lay in the county court close to their door would encourage them to think about divorce, and try to obtain it?

5895. That is what I ask?—Yes; of course that is part of the object of giving the county court jurisdiction—that these people who really have a case for divorce should get it.

5896. But might not it also operate in the way of suggesting that they might very easily get a divorce?—Yes; I do not think you can get rid of that element; it must exist in all jurisdiction.

5897. Then, with regard to what you said, in answer to Sir Lewis Dibdin, as to cases of desertion. You contemplate there it would be possible for persons to agree not to come together again for three or four years, but, in that case, is it very greatly different from divorce by mutual consent, which is repeated, if two persons wish to get a divorce, and for that purpose one left the other for three years?—At all events, there is three years' test; if they persevere, it is some test of their sincerity in their wish for a divorce.

5898. But the suggestion is, people might be divorced by saying, "We do not want to live together any more," and that that should be repeated after three years, and if they still do not want to live together, that there should be a divorce?—Yes.

5899. Is there much difference in principle between divorce by desertion, which is mutually accepted, and divorce by mutual consent, when the request for it is repeated after a lapse of time?—I do not know that I quite follow. If the parties consent to qualify for a divorce by one leaving the other and remaining away for three years, that would be connivance no doubt. I do not think you can guard against that really. You must leave that to the discretion of the judge administering the law. Then we are prepared to face that; we say where one spouse leaves the other for three years, the party deserted should have the right to say, "I am "left a widow (or a widower), and I am entitled to a "divorce."

5900. One other question which is suggested by something the Chairman said. He asked you whether, in your experience, there was much demand among the poorer classes. I suppose those assisted at Mansfield House are mainly what may be described as the very poor?—Yes.

5901. Rather than casual labourers?—Dockers chiefly.

5902. But you would agree with the other witnesses that the class above that—the genuine regular worker and wage-earning classes—are very strict in their observance of their marriage vows?—I do not know that I could say that. At the same time, I do not think we get so many of the skilled artisan class bringing this class of difficulty before us.

5903. Have you ever heard of any section of what I may call, in that connection, the genuine working class formulating any demand for extension of jurisdiction on the ground of divorce?—I think we have sufficient of what I may call better class workmen coming to us with this difficulty—the divorce difficulty.

5904. I quite appreciate that, but they would be individuals themselves who are in difficulties?—Yes.

5905. Have you ever come across any demand on the part of the working classes as a whole for this extension on the ground that they felt it to be a grievance?—No, I do not think I have had any opportunity of gathering the view of any class expressed as a class.

5906. With regard to publication; I think you and your body draw a distinction between publication in the county court and publication in the High Court; you would forbid publication in the county court, but not in the High Court?—I think we should forbid it n the High Court too. I do not think we made that distinction, though we had that question in our minds. We considered it more as a county court matter.

5907. You would forbid publication altogether?—Yes.

5908. Then one question about the difficult question of penal servitude. You said you thought it more a hardship to the wife to be tied to a man in prison than for the man in prison to know he might come out and find his wife somebody else's?—Yes, I think that is practically our opinion.

5909. Have you much experience of men sentenced to penal servitude for long terms of imprisonment?—No; we have had cases; not very much.

5910. I have had some experience, and I should be sorry to think they were all persons incapable of living a good life when they come out?—Yes, I do not disagree with you there, your Grace.

5911. With regard to all these questions of extension, I was much interested in what you said about its bearing on the teaching of the New Testament. It would interest me to know whether you and your colleagues, when you were sitting, considered the ground of your proposals on the apparent teaching of the New Testament?—No, I do not think the point was raised at all; I think we looked at it as a collection of lawyers.

5912. (*Mr. Spender.*) May I elucidate your proposals. Three years desertion without adultery should be a ground for divorce?—Yes.

5913. If the desertion is accompanied by adultery, then you suggest desertion for 12 months or even six months should be enough?—Yes.

5914. Have you considered the case of equalising the conditions between the sexes and granting a divorce for adultery alone by a man?—At the meeting of the association we discussed that matter rather strongly, and one gentleman moved a resolution having the effect of equalising the rights of the sexes on that point, and after some discussion it was withdrawn.

5915. Then you came to no decision?—Not on that point.

5916. Have you any personal views to lay before the Commission?—Yes, I have; shall I give them?

5917. (*Chairman.*) Yes, please?—I think in the case of the working man to give the wife the right to demand divorce on the ground of one act of adultery might in many cases effect a very great hardship. I am thinking more of the case of the man whose work takes him away from home for weeks together; it might even take him to tropical countries—to South Africa; or it might take him abroad as a sailor, and in some part of the world he might be guilty of adultery. He comes back to his wife and naturally he does not tell her anything about it and she does not learn anything about it for the moment. I do not think she necessarily suffers in any way which gives her the right to a divorce. Then possibly his mates, or some one who knows him, comes and tells the wife he has been guilty of this sin. I do not think that alters the case sufficiently to justify her in demanding a divorce. Then, again, it is possible in these casual lapses, or accidental lapses, as they have been called, there may be some reason owing to the relationship of the parties at home, the wife's health or the wife's indifference or coldness, which to some limited extent would be an excuse to the husband for an occasional lapse. I think the thing to be looked at is this, whether the act of adultery by the husband is accompanied by such circumstances as would naturally lead one to suppose that he was permanently alienated in his affections from his wife, or that the act was accompanied by some circumstances of indignity or heartlessness to the wife. In cases of that description I should say the wife had a right to demand a divorce. But for a single act of adultery (I do not mean necessarily one act free and the second is necessarily to be punished) for a single act of adultery I do not think it would be wise to give the wife the right to demand a divorce. It seems to me possibly a capricious or vindictive woman might take advantage of it to punish her husband and her children and herself out of all proportion to the crime.

5918. (*Mr. Spender.*) Do not you think it would be fair to leave that discretion to the woman as it is left to

the man in the case of the woman?—No; the difficulty is that if you give the right it is probably the capricious or vindictive woman who will make use of it.

5919. Judging from your experience, do you think it would multiply divorce? If you give the right, do you think the working woman would be more likely to take advantage of it than other classes?—I do not think the working classes take a very serious view of a casual act of adultery, and if you gave them the right I think it would be, as I say, the vindictive or capricious woman who would take advantage of it, and she would perhaps be rather unpopular amongst her friends for doing it.

5920. Do you think that is a sufficient reason for not giving it to a woman who might feel it to be a grievance?—You have to balance the two evils, and I think I should say the solution lies in not giving her the right in these isolated cases.

5921. But you would give her the right (if I rightly understand) if she could bring evidence that the offence was accompanied by an alienation of affection?—Yes; and certainly if it were repeated time after time it would be *primâ facie* evidence of an alienation from her.

5922. Now broadly speaking, with reference to the questions the Archbishop put to you ——?—May I make another remark in this connection. Where an act of adultery was accompanied by any danger to the wife—where the man has contracted a disease—then if she is infected or not I should say she would be entitled to say she would have a divorce. That is my own private view, but I admit it is a very difficult subject.

5923. Then with reference to the questions which the Archbishop put to you. You do not want to make divorce easier for poor people than it is now for prosperous people; is that a fair definition?—These changes will, of course, make it easier for rich and poor; but I do not wish to make divorce easy—too easy; and I would not give it for nothing. I mentioned a possible 10*l.* divorce, and I should not care to make it cheaper than that.

5924. And that would be about equalising the rich and poor. It would be as difficult for poor people to get divorce in the county court at that cost as for a better-off man to get a divorce in the High Court at, say, 50*l.*?—I think it would make it reasonably easy for the poorer class and there are not many who could not raise the 10*l.*; and for those who could not (the resolution which I have read meets the case) we should give the county court jurisdiction *in formâ pauperis* as well; but I should be sorry to see a judge grant those licences for that procedure very freely.

5925. Now with regard to separations; would you keep the jurisdiction for that in the hands of the police magistrates or would you give that also to the county courts?—I see no reason why it should not be given also concurrently to the county court judges. He might find it convenient to have the power when he was dealing with divorce.

5926. Without taking it out of the hands of the police courts when it is complicated with other matters?—Yes; I should not limit the cases they have, but I should not like to see them continue to have it perpetual—I think it is a mistake to let them grant perpetual separations.

5927. You said that judicial separations should be in very few cases and only for a limited period. Would that meet the cases left over which are not provided for by the various changes suggested—cases of cruelty in which the wife could not get a divorce because she might not be able to prove adultery, or because the husband might not have ——?—I think so. I think it would meet cases of cruelty, and possibly cases where the husband practically starved his wife and children (that happens rather frequently I am afraid) and prefers to spend his money on drink and not give her enough to keep things going; and I think it would be good for the magistrate to have power to grant separations for six months, say.

5928. Then the wife would have to apply again?—Yes.

5929. Then would that be a ground for divorce if it was repeated?—That is a matter I had not thought of.

5930. Then as to reporting; you contemplate the same rules as to county court and High Court. Would that extend to the reporting of the evidence, or only of the results and the judge's summing up?—I think we should limit it to the statement of the names of the parties and the result. Just the names of the three parties perhaps, and say who was the petitioner—the husband or wife; and the result. I do not think I should publish more.

5931. You do not think if the case were kept as private as that with your easier machinery, that it would tend rather to remove one of the deterrents?—No; the deterring effect I am rather sceptical about. People who are indifferent to public opinion and the opinion of their neighbours it would have no effect on. Sensitive people it might affect, but they are the people it would very often prevent getting the justice they should have.

5932. In the working classes you do not think it is a deterrent that the name should appear?—I do not think it is a very great deterrent.

5933. (*Chairman.*) Just one or two questions upon your answers. You said, I think, that among the working classes an act of adultery was not thought so much of as possibly it might be?—Yes, that is my opinion.

5934. Does that apply to an act by the husband, or does it apply rather to the wife?—Both, but chiefly the husband.

5935. Take his case. Do you think if the wife had a right to obtain a decree on the ground of an act it would tend to a prevention of that view you mentioned—of what they think—would it act as a check on the husband?—I think it would in many cases, but I do not think it would universally.

5936. One point about desertion; I take it your resolution is as to wilful desertion, and the judge would have to be satisfied with that?—Yes.

5937. Not in agreed desertion?—Not in agreed desertion.

5938. Then my question about demand was intended to be directed to demand for facilities to deal with the suits. That is what I meant to put if I did not put it. Is that a matter which you consider from your experience there is a demand for?—Oh, a very great demand. I am perfectly certain in the east of London, if the proposals which I have incorporated in these proofs were adopted, there would be rather a considerable number of cases brought in the local county courts.

5939. I am not at the moment intending to refer to the demand to increase grounds?—No.

5940. You appreciate that?—Under the present law, assuming divorce could be got?

5941. Yes; assuming the present law by its difficulty of application on the ground of expense be dealt with, you say there is a demand for cases which might be brought being brought at a less expensive court?—There is a very decided demand.

5942. Would you give us the grounds for that statement?—We often have cases before us where the parties are qualified under the present law to get a divorce, and then the question arises, what will it cost; and they generally put the question bluntly to us, "Would you take it up, and what would you "carry it through for?" and we say, "Without saying "we will take it up for you, it will cost you at least "20*l.* and possibly 30*l.*;" taking a fair average perhaps 25*l.* That is after we have formed an idea of what the evidence would be. They shake their heads and say it is impossible; whereas I am morally certain if they could do it for a ten-pound note many of them would say, "Will you take it up?" I do not say we should take it up, but they would say, "We will try "for one."

5943. Then, as distinct from that form of demand, just repeat what you have to say as to any demand for extension of grounds being brought to your notice?—Oh, the cases we have had before us have led to the conclusions that we have embodied in these resolutions.

5944. But not expressed in a special form?—No, we have never had any opportunity that I know of to get the collective opinion of any class of working men on this subject. There is no organisation that I know of that has expressed an opinion as such.

(*Chairman.*) Thank you very much.

Mr. Douglas Eyre called and examined.

5945. (*Chairman.*) You are a barrister-at-law of 5, New Square, Lincoln's Inn?—Yes.

5946. Have you had 25 years' experience at Oxford House in Bethnal Green?—Yes.

5947. And you were for some years vice-head of that House?—Yes.

5948. Before that you had been a solicitor and after that you were at the Bar?—Yes.

5949. Did you start and direct for a number of years the work of the Poor Man's Lawyer at Oxford House?—I did.

5950. And have you for many years been consulted by many people of the industrial classes of both sexes as to their legal difficulties?—Yes.

5951. What part do they come from particularly?—Bethnal Green particularly, but all the surrounding districts; from Hoxton, Stepney, Shoreditch, and parts of Whitechapel and Hackney.

5952. Have matrimonial troubles been a subject of consultation with you?—Yes.

5953. With regard to the present law is it within or outside the reach of the poor?—It is altogether outside their reach.

5954. And does the provision for *in formâ pauperis* deal with it?—No, I have always told them that I feel the procedure is inapplicable.

5955. In your proof you say you could give particulars if required?—Yes, but I have seen the expert evidence that has been given, so I do not propose to go into it.

5956. Details as to cost?—Yes. I can put it in my own way.

5957. Would you summarise it?—Firstly, there has to be proof of a man or woman not being worth more than 25*l.*, a purely arbitrary basis of discrimination. Then they have to lay a fully stated case before counsel through a solicitor. They have to get a solicitor to take up the case at the outset as a condition precedent to getting the order. Then they have to procure a certificate that there are reasonable grounds, and there has to be an affidavit verifying the case and exhibiting counsel's opinion which has to be attached to it; then there follows the appointment of solicitor and counsel. The official solicitor cannot act; and not only in the preliminary stages, it seems to me, are there steps that involve them in great difficulties, but afterwards there are the difficulties of getting solicitors and counsel to take up the case. So that I have always taken upon myself to say to them, "I am afraid this *in formâ* "*pauperis* procedure is not a procedure which I think "you can resort to."

5958. Have you had to tell people they cannot get relief without providing so much?—Yes, I have, commonly. Well, I have practically said: "Unless "you can find at least 30*l.* you cannot go on and "the divorce law is beyond your reach and you must "bear your burdens." That has been practically my advice.

5959. Then you would suggest, I take it, that that state of things should be in some way remedied?—Yes, it seems to me if there is a divorce law at all it should be applicable to all classes of society.

5960. To take it as briefly as possible, have you thought out the way in which that could be dealt with?—Yes, my submission is that the county court jurisdiction should be extended to cover divorce, and that the county courts are the proper poor man's courts. I myself have not been in favour of the summary jurisdiction of magistrates in connection with the granting of separation orders which have the effect of permanently separating the parties. I think that that jurisdiction has been unsatisfactory, and the county court jurisdiction is the jurisdiction which is required.

5961. To follow that up, would you take away the whole jurisdiction of the magistrates to deal with these cases?—No, I think the magistrates ought to have power to grant orders of temporary suspension of cohabitation, especially in cases of cruelty and assault, and that the magistrate's order should not have effect beyond a certain period, and that if a permanent separation or divorce is required, the civil courts should be the courts to which to resort.

5962. I note in your proof that there is an unequal state of things on these separation orders?—Yes.

5963. What is it you want to say about that?—I have known cases in which the husband has been a martyr in connection with the conduct of his wife; and it is a very serious matter for the poor who depend entirely on their wage-earning capacity. I have known a husband molested to such an extent by a jealous wife that his health has been practically undermined. I have known a woman absurdly jealous and suspicious of her husband's conduct which has been, I believe, quite without exception all the time; I have known her simply make his life intolerable, affecting his health prejudicially, beset him on his way from work, sell his clothes, and withhold food from him when he came back from work. There are cases of that kind which seem to me to lead to this suggestion, that molestation is a ground on which suspensory orders should be granted.

5964. You mean the Act at present gives no relief to the husband except when there is habitual drunkenness?—That is so.

5965. And you would meet the difficulties you suggest by giving the husband some remedy?—Yes. I wish also to observe that habitual drunkenness has been so defined by the Legislature and construed by the High Court in the case of Eaton *v.* Best, that the relief under this head does not travel very far. Practically an habitual drunkard must be a man or woman habitually on the verge of lunacy. But a man who is a drunkard—a habitual drinker to such an extent that his wife and children are left without any means of maintenance from him—does not necessarily come within the definition of the law, and so that case is not, neither is the converse case where the wife is the culprit, covered by the Summary Jurisdiction Act.

5966. Then the next point you mention is one we have had before, that the wife should not necessarily be obliged to leave her home to get a remedy that she can only now get if she does leave her home?—Yes, I wanted to press that very strongly, because I have had so often cases about that. In order, practically, to get an order under the Summary Jurisdiction Act in the cases fourthly and fifthly described in the section, she has to leave and live separate and apart from him. Often have I known cases in which a good-for-nothing husband follows and *besets* the wife, and clamours outside at night for admission to her place of refuge, and the police are not disposed to intervene as she is armed with no order entitling her to take the step in question. This requirement also involves the lapse of an interval of time between the acts of cruelty and neglect, as the case may be, on which she relies; and the application for the statutory relief, during which she is often apt to experience the sorest of trials; and I have known orders refused in cases which seemed to me very strong indeed, in which the unfortunate wife has been dependent entirely upon her own exertions to keep herself above water, and the children as well, in which the husband comes and molests her at her place of work and elsewhere, and practically makes her life a burden until he gets some money out of her.

5967. Then I will pass on to the next point you deal with. "There should also, I suggest, be less capacity "than there is now for evading or setting at naught "a magisterial order"?—Yes, I have had frequently cases where the magistrates' order is disregarded.

5968. Have you any remedy to suggest on that point?—I have thought it out, but I have only this to suggest: there should be some security for payment; that the man against whom the order is made should produce sureties, or be in some way required to pay the money into court, or at least register his address; and, if he does not comply with such conditions, the court should be able to deal summarily with him. I should certainly be inclined to extend the powers of committal for default of payment of money due under the orders granted under the Summary Jurisdiction Act.

5969. Your next point deals with the county courts again?—Yes.

5970. And then you say the county court is better than the police court?—Yes.

5971. "And that the county court judges should "have power, by order in chambers, to sanction suits "*in formâ pauperis*"?—Yes, and I think the liability to costs incident to the county court procedure is sufficiently deterrent against unjustifiable applications for matrimonial relief. The poor will look twice before they incur obligations for costs at all, even to the extent of a county court scale.

5972. You think it will check precipitate applications?—Yes, which are now very often made unnecessarily to magistrates.

5973. Do you think you would find more careful dealing with the cases than at present?—I think magistrates have been very careful, but it has been very difficult to judge as to what view the magistrate will take. My opinion is, in the civil courts, precedents will be established which will be followed, as a rule, by the county court judges if they have this jurisdiction.

5974. Then the next points you deal with are chiefly about costs. Would you permit of the appearance of solicitors in court?—Yes, I would.

5975. Why?—Because I think it is imposing on parties a burden of costs beyond their capacity if solicitors fee counsel.

5976. It is suggested, unless it is left in the hands of counsel, there might be a danger of more unscrupulous practice?—My belief is the county court judges having a great familiarity with litigants of the poorer classes are quite capable of dealing with this jurisdiction.

5977. And they would know their solicitors?—They would know their solicitors, and in addition to that I have suggested this in my proof, that it may be that a county court judge should not have jurisdiction beyond granting a decree nisi, and that all the papers might then be sent to the central registry for examination before the decree absolute is pronounced.

5978. I think that is found in the Report of the Committee?—I think that was suggested in the Report.

5979. Then, powers of transfer or stating cases, and you suggest power in the High Court to assign counsel on a certificate of the county court judge to argue it?—Yes.

5980. Do you find precedents for that under the Poor Prisoners' Defence Act?—Yes, the Legislature may well be expected to extend the principles that underlie this enactment and the costs in Criminal Cases Act, 1908.

5981. Then you think the cases should be taken at special sittings?—Yes.

5982. Is there a reason for that?—Yes; my own hope is that these cases will be dealt with without everybody being present in court; that they will be dealt with in private. I think that the merits will be better dealt with, the people who can give evidence will be more inclined to come forward, and, altogether, it will raise the tone of the proceedings if they are separated off from the ordinary proceedings of the county courts.

5983. It follows almost from what you say that you would not allow publication?—No, I should be dead against publication; but I think it very important there should be an effective registration of decrees and of the persons against whom the orders are made and the extent of the relief granted.

5984. I see one of the grounds you put against publication is discouraging witnesses. Is that based on any experience of yours?—No; it is only my surmise from the result of what I have seen myself in dealing with these cases in East London—that the respectable witnesses would be extremely loth to come forward and give evidence which would be published in the papers.

5985. Then your experience leads you to think if all these cases were dealt with in private, justice would be better administered?—I think so. I put it on the ground of public policy.

5986. The next point, I think, is generally accepted at present; that there should be a limit placed upon it, some limitation of means?—Yes. I have attended the Poor Man's Lawyer Association meetings, and 2*l.* a week seems to me to be a kind of line to draw.

5987. You have already dealt with the next point, I think. Now, the amendments as to substantive law. As to judicial separation first. Let us deal with that. First of all, has your experience led you to form any views as to the results of permanent separations?—No, I cannot speak as to that with any confidence at all. My experience is generally that acts have been committed which would ground an order for judicial separation beforehand.

5988. For divorce do you mean?—Yes, one or the other.

5989. For divorces?—Yes.

5990. And that the separation is taken as a remedy before the magistrates, because they cannot get divorce. Is that what you mean?—Yes.

5991. Do you think, then, in many cases where at present there is a separation order, divorce would have been obtained if there had been an opportunity of getting it from the court?—Yes; I entirely confirm the evidence that has just been given by Mr. Blott on that point. I have always said to litigants, or would-be litigants, when they have come before me: "Yes, these "facts are sufficient to justify a divorce, but you cannot "afford to get it." They have asked frequently for a permanent dissolution of the marriage relationship.

5992. Then, is your view that there is any demand amongst the class you have met with for the power to prove their cases before the court?—Yes. There are very bad cases indeed, and it is very much more important, it seems to me, for the poor to have that law within their reach than for the rich, because the poor depend entirely on themselves for wages, and their wage-earning capacity is very much deteriorated through these matrimonial troubles.

5993. As to divorce *a vinculo*; I should like you to give your observations upon that yourself?—Yes, I think it is very important indeed in considering the question of extending divorce *a vinculo* to draw a clear distinction between the position of the secular law and the position of churches. It seems to me that the Church of England in particular is in a very difficult position, and has been for some time with reference to the matrimonial relationship; and as I have suggested here, I first submit that a clear distinction should be drawn "between marriage as a civil contract and the "full conception of marriage—the ideal relationship of "the spouses, so clearly expounded by the Founder of "Christianity and recorded, as Mr. Gladstone and "others have so cogently urged, with entire consistency "by the three Evangelists." Then I have submitted that "the civil contract of marriage is that dealt with "by St. Paul in his letters to the Corinthians, when "he declared that there might be separation for "differences of religion between the parties. In fact, "it was not until the Middle Ages that the religious "ceremony was made obligatory by law anywhere, "while, as to England, at common law and before the "Marriage Act of 1753 marriages were, as they are "now, perfectly valid for all civil purposes without a "religious ceremony." It appears from cases, particularly those of Beamish *v.* Beamish and Regina *v.* Millis, that the clergyman's function was the witness' function; he was a reliable witness to the fact of the contract having been duly entered into. So I think we want to draw a clear distinction between the two—the civil marriage in the eye of the secular law, and the matrimonial relationship in the eye of the Church.

5994. I see you say a civil marriage pure and simple is valid but not obligatory in England, Italy, and Spain, but it is obligatory in France, Holland, Belgium, Germany, Switzerland, Austria, and Brazil?—Yes, but that has been practically brought out—I cannot say I am giving that evidence as a result of my own researches—it has been brought out very forcibly and clearly by Mr. Lecky in his book on "Democracy and Liberty." Then I submit, "Churches, having regard in particular "to the Act of 1857, and the probable extension of its "provisions in future in view of the anomalies which it "has created, should be freed from all civil functions

" incident to marriage, such as its registration, which " should be exclusively the duty of the civil registrar " and obligatory on all parties to a marriage contract— " churches will thus be confined to their proper pro- " vince, namely, the performance of the religious cere- " mony in the case of their own members, and in cases " in which there is no cause or just impediment in the " eye of the Church. The Churches will also be free " to urge with all the more force upon the conscience " of the community that in the eye of religion marriage " is much more than a civil contract, and that all who " enter into the marriage state will do well to procure " the super-addition of the religious ceremony to the " civil registration. If churches perform civil func- " tions in relation to marriage as the creatures of the " State they are apt to fail in their real functions—as " the salt of the earth for example (*a*) to celebrate " marriages of those unfit for the religious ceremony; " (*b*) to suffer (voluntarily or involuntarily) the Chris- " tian's ideal of marriage to be degraded to the lower " standards of human society. I think that this mix " up by force of law of the functions of civil registra- " tion and religious ceremonial has been most un- " fortunate. I have, for instance, in the course of my " residence in East London—I am glad to say in " recent years conditions have very much improved— " but I have in the course of my residence in East " London witnessed sad sights in connection with " marriages celebrated in the churches of the establish- " ment by the clergy. I have seen young girls married " in church in the morning reeling about the streets in " a deplorably drunken condition in the afternoon; and " I have known a clergyman go out of his way to cele- " brate marriages in his church of large numbers of " folk of whom he knew practically nothing, and who " were in reality not members of the church at all. " There should be no legal claim to be married in a " church or chapel at all, and certainly not on the part " of those who are not members of a congregation, and " who, as things at present stand, are enabled to adopt " the religious form without attaching any more im- " portance to it than the purely civil form. The " Church of England, although established, has been " released from all probate and testamentary jurisdic- " tion, and from all jurisdiction relating to matrimonial " causes. It remains for it to be freed from all civil " functions in relation to marriage. It need not follow " from this separation of functions that the State will " adopt a lax conception of the marriage contract (as " France did in 1792, but discarded in 1816). The " State may be expected, on grounds of public policy " alone, to regard the marriage contract as no ordinary " one, but one involving a permanent change of status, " and not dissoluble except for the most cogent reasons, " and through State intervention alone. It is a lax " view of the contract which leads to a lax view as to " its dissolution. The State within its sphere will be " free to provide for or sanction the dissolution of the " contract in certain events, and it has ever been " accustomed to do so, whether we regard the Mosaic " period, or the period of St. Paul, or the modern " period. But as divorce decrees are within the ex- " clusive province of the State, so should the entry " into fresh marriage contracts on the part of divorced " parties during the life of the person from whom they " have been divorced, be in point of law exclusively a " matter for the civil registrar. Provided the civil " function becomes altogether a thing apart from the " religious function, I should be disposed to concede to " the civil courts exercising jurisdiction in matrimonial " causes the jurisdiction to decree dissolution of mar- " riage on all the grounds recommended by the " Commission appointed in Edward VI.'s reign, and " which included Archbishop Cranmer and Peter " Martyr." I firstly submit that (1) "adulterv simpli- " citer on the part of either spouse" should be a ground for divorce *a vinculo*. "This is now the law in " France and Scotland. (2) Wilful and prolonged " desertion or even too long absence should be another " ground. The former is ground for divorce in " Scotland, Victoria, New South Wales. The other " grounds should be (3) Capital enmity. (4) Aggravated " cruelty."

5995. What do you understand by capital enmity?—I understand the reformers in the Reformatio Legum meant such enmity as led to the impossibility of the married life continuing.

5996. It is your translation of their language?—Yes. Their expression is " mimicitia capitalis," and I submit all the grounds for divorce *a vinculo* seriously recommended before this Commission are included in the grounds suggested in the Reformatio Legum. " Divorce *a vinculo* should be restricted to specific " causes which operate to ruin the happiness of " married life, and to permanently frustrate the " whole object of the civil contract. There should " not be so much left to judicial discretion as is done " in Switzerland and Maine; still less, of course, " should there be divorce by mutual consent. In " the case of a second marriage after divorce the " publication of banns is, as things now are, obligatory " on the clergy, and there is not inconsiderable autho- " rity for the assertion (*a*) that a clergyman must " solemnise the remarriage by licence of a divorcé on " pain of ecclesiastical censure, and that, in the last " resort, he may be compelled to do so by mandamus. " (*b*) That the grant of a common licence for such a " marriage is obligatory (*see* Dr. Tristram's letter to " the 'Times,' 6th June 1903)." We are aware of the strong and very competent opinion on the other side; still, Dr. Tristram's view is the view of an ecclesiastical lawyer of high authority. "If the law " were altered as suggested *supra*, all such difficulties " would be done away with."

5997. Those are suggestions which your studies have led you to make?—Yes, they are suggestions based upon the consideration of whether it is advisable to extend the jurisdiction to grant decrees of divorce *a vinculo*. I should be very sorry to transgress what I believe is the Scriptural law on the subject, but I think it is because we have mixed up the civil aspect with the highest ideal aspect that is presented to us in the Gospels that we have got into these difficulties which have been created under the Divorce Act of 1857.

5998. Now we are in the year 1910, a long way after that Act?—Yes.

5999. In the existing state of things would you tell me whether you have formed a view whether the state of the law as to grounds should be extended to the causes you have just read?—In view of the Act of 1857, my Lord?

6000. Yes?—Yes, I think so, because now it is a matter for the civil courts.

6001. Has your experience led you to think that at the present day if those causes were extended it would be beneficial or not in the interests of morality?—I think it would be beneficial.

6002. Will you tell us the grounds on which you state that?—My grounds are that if the power to decree divorce was extended in relation to the industrial community there would be a greater deterrent than there is now; deterrent to immoral actions and wrong alliances during the matrimonial obligation.

6003. Is there any other point you want to draw attention to?—There is one point about agreements—separation agreements—that I want to say a word about.

6004. You mean agreement as the law permits at present by deed?—Yes; I have found it generally best in the large majority of cases to effect what is necessary by getting the parties to agree to a separation; and I think those separation agreements should always be registered, which is not the case at the present time; that their validity should depend upon their registration; and that it would be a good thing if payment of the money which is payable under a separation agreement was capable of being summarily enforced on the registration of the agreement. I have always advocated separation agreements, because if there is reconciliation they can at once be torn up, and I think also it would be a good thing for the State to recognise them more than it has hitherto done. I have had the experience of a county court judge very much criticising our policy of separating a husband and wife through a separation agreement. I think it is better to separate them through a separation agreement than

in any other way, because it is much more easy to dissolve a separation agreement than it is a separation order.

6005. Then, just to summarise your very interesting evidence, you are in favour of an extension of a facility of bringing the cases before the court?—Yes.

6006. You are in favour of an extension of the grounds on which divorce should be granted, for reasons you have already given?—Yes.

6007. And you do not like the idea of separation orders of a permanent character?—No, I think a separation order should be always capable of ripening into a decree of dissolution.

6008. There is one thing we have not got in your proof—you seem to have thought out this subject a good deal—with reference to the relative position of the two sexes?—Yes, I should put them on an absolute equality.

6009. Your evidence has been extremely well given; let us have the ground on which you place that statement?—I have submitted, in my evidence before you, that the civil contract should be the thing to emphasise from the point of view of the State—a civil contract creating a permanent change of status—practically a lifelong relationship; and my submission is that if there are circumstances which subsequently arise, going to the root of the whole contract which is the basis of the relationship between the parties, that those circumstances should ground a dissolution of it.

6010. You think that equally applies on both sides?—There ought to be equality, I submit, between the spouses on that ground, and it is not necessary, I submit, for people to dive into utilitarian principles in the matter and unearth all sorts of ideas that may occur to them as to the different results that follow from misconduct in each case. My submission is you simply look at the contract and see whether there has been a bad violation of it; and I submit if you look into the Reformatio Legum, which is an extremely able document, drawn up as embodying a unanimous decision on the part of those Commissioners, you will find them bring out clearly the equality of the spouses in this respect. They regard adultery on either side as an equally gross violation of the marital obligation, going to the root of it, as I understand, and not to be dealt with by the courts, "sine gravissima poena." They also condemn judicial separation (Divorce *a mensa et thoro*).

6011. Do you think that covers the case we have had suggested, which occurs—not frequently, but certainly it does occur—of something that has happened before marriage with another man, and which leads to the production of a child very soon after the time of the marriage. I do not know whether you have had that brought to your attention?—That, of course, grounds nullity—would it not—rather than dissolution?

6012. No, it is decided it does not?—No, but ought it not to be viewed from the point of view of nullity rather than dissolution; anything that has happened before the contract has been entered into? It is like voiding an ordinary contract on the ground of undue influence or any other vitiating matter.

6013. Fraud?—Yes, fraud.

6014. (*Mr. Brierley.*) I do not think I wish to ask you anything except this. I understand you to say you would confine the powers of the courts of summary jurisdiction to making a merely temporary order?—Yes.

6015. And that then the party, which in most cases would be the wife, would have to go to the county court?—Yes.

6016. Have you considered that a great many of these wives really would find it almost impossible to go to the county court on the ground of expense?—I quite agree with what Mr. Blott has said. I consider that if there is a very serious case, sympathising neighbours and friends of a poor woman will come to the front for the purpose of finding that 10*l.* that he mentions. Assuming a woman is in such abject poverty that that cannot be found, then my submission is the county court judge should have power to order procedure *in formâ pauperis*.

6017. You do agree that these women who require protection are very poor?—Yes, and they get their suspensory order under my idea.

6018. Yes; I quite understand if divorce is required it would be necessary under your proposals that he or she should go to the county court?—Yes.

6019. But supposing a woman is so poor as not to be able to pursue the remedy in the county court, and is satisfied with the protection given by a separation, would you be against her proceeding in the police court for the further renewal of that order?—Well, I was inclined to on principle—that it was scarcely the court to deal with permanent separation. That was my idea of it; and also that the magistrates are really overloaded with work. It is a very delicate jurisdiction.

6020. (*Sir Lewis Dibdin.*) I think you recognise, from what you have told us, that the ordinary county court sitting is not a suitable forum for hearing divorce cases?—Yes, but I entirely demur, Sir Lewis, to some of the ideas that have been expressed about county courts. I think it is not at all right to regard a county court nowadays as a debtors' court. I think it has advanced in point of capacity to act far beyond that stage at the present time.

6021. With regard to the very poor, whom you have told us of chiefly, I think; would you say that they are very familiar with the county court? I think your experience is London experience entirely?—Yes.

6022. In London, do you think that the very poor frequent the county court much, except, of course, when they are not paying their debts?—They would avoid it if they could.

6023. Would you agree with what we have heard from other witnesses, that the London poor, at any rate regard the police court magistrate rather as their friend and adviser?—Oh, yes, very much so.

6024. And are accustomed to go to him in all their troubles, of a kind that he can deal with?—Yes.

6025. And, amongst others, with their matrimonial troubles?—Yes.

6026. Does not that rather suggest to you that, at any rate, the London police court magistrates must be a more or less suitable tribunal to deal with these matters—I do not mean divorce, but as they do now—separation?—Yes, I think it is a very good tribunal for dealing at once with an emergency which has arisen in the matrimonial relationship. I think a stipendiary magistrate of the best type—if I may say that—is an extremely capable person and very sympathetic, and has done the best he can; but I think he is often obliged to act in a hurry, and the circumstances under which his advice is sought are circumstances of publicity; there is the presence of a large number of undesirable people in the police court itself. I think the whole atmosphere for a poor woman is a bad one in which to apply for advice.

6027. I have no doubt you have had experience of the recent Children's Act?—Yes.

6028. Do not you think that works well—the obligation of having a separate court from which the public are practically excluded?—Yes, I think the greatest boon for the poor would be to create an official department for them to resort to for advice. I should like to see an official poor man's lawyer attached to the district courts.

6029. But with regard to the children's courts, do you think a court similarly separate to deal with separation cases would be a good thing?—Yes.

6030. And do you think that the London magistrates would still be, shall I say, the best persons—but, at all events, good persons to deal with this class of case?—I think they are too highly salaried officials to justify the State in employing them in preliminary matters such as the giving of advice.

6031. You have spoken of their being overworked men. Is it not the fact also that the London county court judge is an extremely overworked person?—Yes: there would have to be an increase in the county court judges.

6032. You contemplate an increase in that direction—of judges?—Yes.

6033. Then a word as to the publication of reports. You are, on the whole, against publication?—Yes.

6034. While recognising the difficulty of the question?—Yes.

6035. I should like to put it to you, not as combatting that, but supporting it rather; do you think newspaper reports have a deterrent effect in the case of the very poor? I think we can all quite understand the effect they have in the case of the rich or the well-to-do classes, to whom public opinion is of great importance. But do you think they have a similar deterrent effect with regard to the very poor?—No, I do not think it comes in at all with regard to them. I think it does the very poor harm to read all that is reported in the papers. These things are very often published at full length in Sunday papers, which they read carefully, and not only they themselves, but they are distributed from house to house in the poorer parts of London, and the children pick them up and all the members of the family get hold of them.

6036. Then a question or two on your view as to the increase of the grounds of divorce. As I gather, your position is this: if you could separate marriage law altogether from the Established Church, that then you would be in favour of a very considerable modifying of the grounds?—Yes.

6037. For that purpose you would take away from the Church of England the legal duty of marrying people altogether?—Yes; marriage is absolutely complete now, from the point of view of the secular law, without any question of the Church.

6038. But how does that apply to the problems that are immediately before us. Take a case where there has been a civil marriage; I suppose you would agree that the Church of England regards these people as perfectly married as if they had been married in church?—Yes, legally speaking.

6039. Now, suppose there is a divorce, would the Church of England regard those divorced persons in any other light than they would if their original marriage had been a church marriage?—I submit they would, if the Church has no civil function whatever to perform in initiating the marriage.

6040. That is the point I wanted to ask you. Do you think the Church of England regards in a different light persons who have been married by the civil procedure and persons who have been married in church?—Yes.

6041. That is your view?—That is my view; and my view is that they should so regard people differently; that the Church should be free to advise its own members as to what in the eye of religion the matrimonial relationship is.

6042. I want you to apply your mind to the effect of divorce upon a civil marriage, and I suggest to you that throughout the history of the Church from the beginning the Church would have regarded a remarriage after a civil marriage exactly in the same way as a re-marriage after a Church marriage?—Yes.

6043. It would make no difference. In other words, it would have regarded both those marriages as irregular unions?—Yes.

6044. But do you think that is wrong?—No, I think it is right for the Church to be free to declare what the highest view is on all those points.

6045. I want to know how you regard it as a practical matter. Supposing your suggestion were adopted, and A and B are married by a civil marriage and afterwards there is a divorce. What is the Church to do with regard to those people? Is it to regard them as still within its communion, or is it to excommunicate them, or what?—It seems to me the question comes in on the re-marriage of a divorced person, and I should think the Church should be free to regard the re-marriage of a divorced person as irregular from the point of view of the Church; but from the point of view of the State, if this alliance is severed which I have referred to, the marriage is perfectly valid and the children are legitimate.

6046. Then I suggest you must add to your recommendation that not only should the duty of marrying people be taken away from the Church by law, but that the Church of England should be left free to deal with persons who have re-married after divorce by excommunication or otherwise?—Yes, that is what I submit.

6047. You do not submit that in your proof, but that is your view?—Yes, it is my view, certainly, and I am much obliged to you for bringing it out, because I wished to say that.

6048. I think you appreciate that that would render the position of the Church of England, as an established body, extremely difficult, would it not?—I should prefer to regard it as releasing the Church of England, as an establishment or otherwise, from a position of great difficulty—almost an impossible position.

6049. You would be releasing it to such an extent that its position as an established Church would be very difficult?—I think the same argument might have been advanced when the testamentary jurisdiction was taken away, and where the jurisdiction in matrimonial causes was taken away.

6050. But is it not your view that if your view was taken it would render the whole relationship of Church and State very difficult?—Yes; I suppose it would be undoing one more link.

6051. A very great link?—Yes, well, but one which it is desirable to undo.

6052. I am not saying it is a bad thing?—Yes, but one which I think it is desirable should be.

6053. Now, you have referred to the Reformatio Legum, and I gather you are one of its rather scanty admirers. I do not think there have been many admirers of the Reformatio?—Well, I think if the Reformatio Legum's suggestions had been carried out, the scandalous condition of affairs that existed after the period of the Reformation would never have occurred. I wanted to bring that out, because it resulted from the Reformatio Legum not becoming law that the Court of Star Chamber declared that the Ecclesiastical Court could not grant a divorce *a vinculo*, and consequently an Act of Parliament had to be got to create a divorce *a vinculo*.

6054. Well, shall we say "it was got," rather than "it had to be got"?—Yes, it was got, and I have always thought that was a great misfortune.

6055. I only want to ask about the Reformatio Legum on one question. You would agree that the Reformatio Legum, as far as Church law was concerned, whether good or bad, was a great revolution from anything that had existed before?—Yes, very great.

6056. (*The Archbishop of York.*) I think we may take it from your evidence that you lay great emphasis on the word "provided" at the end of your proof, where you recommend certain extensions of the grounds of divorce: "Provided a distinction is clearly made "between the laws of marriage"?—Yes.

6057. But, assuming that with regard to one of these additional causes which is mentioned in the document you quote from, the Reformatio Legum, it mentions not only wilful desertion, but "for a too "long absence"?—Yes.

6058. Well, "too long absence," of course, might be a matter of agreement, might it not?—Yes.

6059. Yet you yourself are very strongly against anything that would come near divorce, even civilly, by mutual consent?—Yes, I was rather regarding too long absence from the point of view of some of the grounds of divorce which have been mentioned which do not come within the category of desertion—unwilling absence—a long term of imprisonment.

6060. Would you include long unwilling absence as a ground?—No, there has been no breach of contract there unless the cause be a disgraceful one.

6061. With reference to your evidence as to the division between the civil and ecclesiastical law. I think you have put your evidence clearly. Your view is that the Established Church ought to be set free from its duty with regard to the celebration of marriages, because even in the present situation, and still more if facilities for divorce were increased, and grounds for divorce were increased, it puts the clergy in almost an intolerable position?—Yes, *quâ* the civil function.

6062. That is to say, they are called as civil officers to do things and say things with which they cannot possibly agree as members of an ecclesiastical body?—Yes, that is so.

6063. In other words, the State compels them, because it makes them its officers, to do things which,

in their own conscience, they have no business to do (and which, in the eye of religion and the Church, should not be sanctioned even), and which in the eye of their own Church they ought not to do?—Yes, that is so.

6064. Therefore you say it is only right—if the State desires its civil marriage officers to register and acknowledge unions of the kind that have been before us—it ought to relieve the clergy from being such civil officers?—Yes, that is my submission.

6065. Or, if they are civil marriage officers, it ought only to be for the purpose of witness or registration, and have no bearing on the religious ceremony which they may or may not use in connection with the parties? —Yes, I would go further and say it involves the State in declaring that for the purpose of the validity of a marriage there must be compulsory appearance before the civil registrar.

6066. You would make, in all cases, a civil marriage compulsory?—In all cases, and I submit that is the tendency of legislation throughout the world.

6067. Would you go further and say that the present state of things, by which a religious ceremony is legally obtainable by any qualified parishioner, is against public morals in the sense that it compels the Church to use the most sacred words, and the most sacred sanction, with regard to unions which may be of the most light-hearted, frivolous, or unsatisfactory kind? —Yes, I have been scandalised at some of my experiences in East London.

6068. I think we both know of certain episodes in Bethnal Green?—Yes.

6069. Would you say one reason was the sense of the obligation of the marriage tie among the very poor casual labour classes, and that the words of contract in the service of the Church of England and the words of the benediction have been compelled to be used; the clergy have been compelled to use them under most unsatisfactory circumstances?—Yes, in countless instances.

6070. And you say that has a real effect in preventing these classes having a proper idea of the value and proper obligation of marriage?—Yes, and that they would have a much better idea of the obligation of marriage if the Church was free from the position she is now in. And I want to add this: I think I am right in saying in the case of divorced persons the form of the marriage ceremony in the Prayer Book is entirely unsuitable and unadapted.

6071. Would not you think it was a very bad thing for public honesty and sincerity that the State should require the clergy in such cases as you have referred to to use words which are, though invoking the sacred name, not only inaccurate but a mockery?—Yes, it is quite that, it seems to me.

6072. One more question, because what you have said is very interesting. Would you feel that even supposing, according to your wishes, facilities for divorce were increased, and grounds for divorce were increased, it was still of great value to the State that some body, such as the Church, should be free to maintain the higher ideal of matrimony than the State itself felt able to insist upon?—Yes, that seems to me the very position of the Church; it should be able to reflect the high ideal back upon the State, which in the realm of positive law is bound to adopt a lower ideal than the Church.

6073. Therefore it is in the interests of the State that that religious body should be quite free and unrestricted in maintaining that ideal?—Yes, and it is to the interests of the community as a whole.

6074. It is not only a matter that affects that particular body, but a matter that interests the whole community?—Yes, it seems to me so.

6075. (*The Earl of Derby.*) I understand you would put it that it would be desirable that there might be a ratification of marriage in the church?—Yes.

6076. But the actual contract should be civil?—Yes, compulsorily.

6077. And though, from the idea the Archbishop has sketched out, it would be desirable that it should be ratified by the Church, that practically the civil service should be the marriage contract?—Yes, the Church and all religious societies should teach their members, and all the people they are responsible to, the obligation of supplementing that contractual ceremony before the registrar with a religious ceremony.

6078. That exists at present, as a matter of fact, but it is a sort of feeling that it is not quite the idea to be married at a registry office?—It is the present law that the marriage is complete from the civil point of view when exclusively contracted before a registrar.

6079. But the general wish of people among the poor class is to be married in church rather than at the registry?—Yes, and practically they are entitled to be married in church whether they are Church people or not.

6080. But they are looked down upon if married at the registry office?—Yes, the poorest like to be married in the mother parish church.

6081. And your idea is that everybody, rich and poor alike, should be married first of all by a civil contract?—Yes.

6082. And, making it a civil contract, you would exclude the Church to a certain extent from any dissolution with regard to it?—Yes, I should relieve the Church from any obligations which result from the State in its own wisdom having decreed grounds of dissolution which the Church cannot regard as being in accordance with the principles laid down by Christ.

6083. And, being a civil contract, you would put both contracting parties on equal terms?—Yes, on absolutely equal terms as parties to a contract. But the contract from the point of view of the State must always be regarded, and I think will be, as a contract involving a permanent change of status; as the permanent union of two persons to the exclusion of a union with anybody else. Those are the two elements in the civil conception of marriage which I hope will always, in the interest of the community, be safeguarded.

6084. But, being a civil contract, if a man can divorce his wife because of her act of adultery, even if it is only one act of adultery, equally you would give to the woman the power to divorce her husband also even if it is only one act of adultery?—Yes.

6085. Precisely equal terms in every way?—Yes, and we need not look further than the gross breach of contract that has been committed.

6086. You would dissolve a marriage because of the broken contract?—Yes.

6087. Whichever party broke it?—Yes.

6088. And make no difference in the way they did break it?—No, I think that certain acts ought to ground a dissolution in either case.

6089. (*Mr. Spender.*) With regard to the publication of reports, the grounds you allege would seem to apply to all cases?—Yes.

6090. Not merely matrimonial cases? There would be a large range of legal cases of all sorts and cases in the police courts that would come under the same category?—Yes.

6091. Then it is not specially matrimonial cases you are thinking of?—No, I think the time has come for the State in the interests of the community to regulate the action of the press.

6092. You mean with regard to the publication of all this class of reports?—Yes.

6093. May I just ask one question with regard to your views as to the Church and the State in this matter? These four extensions of grounds of divorce which I think cover almost everything that has been proposed to us you have arrived at from your own experience and consider, as you have said to the Chairman, to be beneficial to morality?—Yes.

6094. And yet you seem to imply that these grounds could not be accepted by the Church, and that they might constitute ecclesiastical offences?—Yes, the Church is bound to teach the indissolubility of the marriage tie as the ideal teaching.

6095. You do not see any danger in the possibility of setting up a double standard in these things?—No, I think if there is not this mix up, which I have been speaking of, the community will thoroughly understand the two positions of the State and the Church respectively in the matter.

6096. You do not think it is possible that, supposing the Church remained established and went its own way, the State also would go its own way, and the separation between the two might lead to a considerable greater freedom on the part of the State?—Well, I am hoping that always, not only the Church of England, but all religious societies, will be fairly united upon the main principles of this question, and the united reflection upon the community of their views will, it seems to me, have a very strong effect and be always capable of keeping the State from going too far away from the proper line of thought with regard to the matrimonial relationship.

6097. But it would be rather a paradox if all the religious bodies were united in opposition to the changes which you think would be beneficial to the State?—I cannot conceive of them being united in opposition to the points I have brought before you to-day.

6098. These four points?—Yes.

6099. But I thought I understood the Church must be in opposition?—But I mean in connection with their application by the State itself—apart from the Church. The intolerable position has been that the Church has been obliged to administer State law based on those principles.

6100. I am afraid I have failed to make myself clear. What I understood was that these extensions of the State law were good *per se* and beneficial to morality?—I think I would rather say it was necessary for the State to adopt a lower ideal than the highest. I should like to put it in that way.

6101. But you would see considerable difficulties in the state of things that was suggested to you—I think by Sir Lewis Dibdin—of the Church remaining an established church, and trying to impose penalties on actions which were sanctioned by the law of the State?—According to my view, the Church would have nothing to do with applying any penalties whatever, except in point of conscience—in the forum of conscience. It would have nothing to do with any civil penalties.

6102. But ecclesiastical penalties?—Yes.

6103. As we saw the other day?—The Bannister case, yes. I think it must be left to the Church to decide what the penalties, in the shape of withholding Church privileges, should be in the case of those members of its congregation who commit breaches of ecclesiastical law.

6104. Who take advantage of the extensions you propose?—Yes.

6105. You do not see any particular difficulty in that?—No, I do not.

(*Mr. Spender.*) Might we ask a question which was asked yesterday about youthful marriages?

(*Chairman.*) Yes, I see no objection.

6106. (*Mr. Spender.*) A good deal of evidence has been given, especially by gentlemen who have acted as poor men's lawyers, that a great many of these cases are the result of youthful and improvident marriage?—Yes.

6107. Is that your experience?—Yes, a great many impossible relations have been established through the early marriages no doubt, but the way to get rid of that seems to me to be by multiplying the facilities for youthful and innocent recreation during leisure time.

6108. You think that would get rid of it?—It would get rid of a great many premature alliances between boys and girls. That is my view of it.

6109. You have never thought of imitating, say, the French law of requiring some kind of parental consent, or some delay, before the marriage of minors takes place?—Yes, I think I should be inclined to that very much. I think it would be dangerous to go too far, but I should like to see no marriage allowed unless the majority was reached.

6110. (*Chairman.*) I should like to ask you one or two questions suggested by your extremely interesting evidence. You referred, in answer to Sir Lewis Dibdin, to what you described as the scandalous condition created in the 16th century?—The 17th century. It was after the Reformation.

6111. Well, the end of the 16th century and the beginning of the 17th?—Yes.

6112. Will you explain a little more fully what you mean by that?—It was this—that the Reformatio Legum which recommended the granting of divorce on the grounds I have specified, never became law. The result of that was that the Ecclesiastical Courts had to administer the law as it was before the Reformation, and that law was that marriage was indissoluble. Therefore, the Court of Star Chamber laid down that the Ecclesiastical Courts could not decree a divorce *à vinculo*. Consequently, they could only decree a judicial separation, or what is practically that.

6113. A divorce *a mensa et thoro*?—A divorce *a mensa et thoro*. Therefore, the only thing to be done in the case of dissolution was to get it sanctioned by Act of Parliament.

6114. I quite follow. I know all that, and I think most of us do, but why do you think it was found necessary that resort should be had to Act of Parliament? It became a common form after a time?—Well, in order that a divorce could be obtained at all and a re-marriage possible.

6115. Does that lead to the conclusion that it was felt the law was not in a satisfactory state, and that there should therefore be Acts, which became common form, passed to relieve against a wrong state of law?—I think what occurred to everybody was, as far as I can make out, that the Reformatio Legum should have become law, and consequently there should have been jurisdiction to grant divorce *a vinculo*; and as far as I can understand the Ecclesiastical Courts were inclined to go to that length until stopped by the Star Chamber.

6116. But the substitute was a common form of Act of Parliament?—Yes, for those who could pay for it.

6117. (*Sir Lewis Dibdin.*) Before you go on, might I ask do you know of any case in the Ecclesiastical Court purporting to grant dissolution before Foljambe's case?—No, but I put it on that basis. The intervention of the Court of Star Chamber did occur, and it must have occurred from some action or proposed action on the part of the Spiritual Courts.

6118. (*Chairman.*) You seem rather to infer that if ecclesiastical courts had not been stopped, they might have been disposed to adopt the principles indicated in the Reformatio?—Yes, because the Reformatio was practically drawn up by Archbishop Cranmer, and after the days of Papal Dispensations.

6119. Are you a historical or ecclesiastical student?—To a certain extent I am a dabbler in it. I have been dabbling in it. I cannot say I am more than a dabbler. The reference to that action of the Star Chamber is in the "Law Quarterly Review" of 1897.

6120. But I want to know whether you could say if you think Cranmer was right or wrong?—I think if they had created a purely civil court in those days, that he was right, but the Reformatio Legum only proposed that this jurisdiction should be granted to the Spiritual Courts—the Ecclesiastical Courts, at that time the ordinary tribunals for matrimonial causes—and that is where the difficulty came in.

6121. But I was going to ask you if your studies would enable you to say whether if it was granted it would have been rightly so granted?——

(*Sir Lewis Dibdin.*) Would you explain what you mean by "rightly"?

6122. (*Chairman.*) In accordance with Christian principles?—No; it would have been right from the point of view of what was necessary as a State action. Of course, the Ecclesiastical Courts were State Courts, and it did not occur to them in those days—and it was perfectly natural—to take this jurisdiction from the Ecclesiastical Courts. That would have been a tremendous act at that stage in history.

6123. But supposing it had been left to the Ecclesiastical Courts, are you a student of the principles sufficiently to enable you to express a definite view as to whether those ecclesiastical courts would have been right in exercising divorce jurisdiction as in the Reformatio Legum?—Do you mean morally or legally?

6124. Morally and legally?—I should say not morally right, because they would be pretending to act on the principles laid down by the highest authority. There was no State sanction for it, and therefore they would have been in a position of reconstructing otherwise than through the coercive action of the State what has been said in the Gospels and elsewhere in the Scriptures upon the subject as affecting the dissolubility of marriage.

6125. That was what I was coming to. Are you a student of those principles sufficiently to say what is the true view to take about it?—There has been a tremendous controversy. I think I can say this. I do not think anybody has worked it out better than the late Mr. Gladstone worked it out. Mr. Gladstone was, of course, a strenuous opponent of the Divorce Act of 1857. He made a brilliant speech in the House of Commons in answer to Sir Richard Bethell, who brought in the Bill, and he afterwards wrote an article which is published in "Gleanings of Past Years," and it is in the 6th volume. Mr. Gladstone argues that what is recorded in St. Matthew is practically consistent with what is recorded in St. Mark's and St. Luke's Gospels, that our Lord really laid down that marriage (of course from the highest point of view) should be regarded as indissoluble, and that the reference to adultery in St. Matthew was necessary by way of parenthesis in view of the Hebrew law which provided for the stoning of an adulterous wife, thus leaving the innocent husband in that event free to marry again.

6126. I quite follow that, but what I was asking you was whether you were student sufficient to be able to put yourself forward as an authority on these questions?—No, I do not think I can claim to be a theological expert. I can only refer to great writings on the subject which I have happened to read.

6127. They are matters of great controversy?—Yes, they are matters of great controversy, and the view I have taken is based in a great measure on the line of thought pursued by Mr. Gladstone.

6128. I put it because we shall have as much authoritative evidence on the subject as we can get. But I asked you because we shall probably, on Friday, have the Scotch views. They have arrived at a different conclusion from that arrived at in England. Independently of this extremely interesting but difficult question which we have just been asking you about, your view, as I understand, would be that it would be in the interests of morality if these causes of divorce were now granted which we have referred to?—Having arrived at the present state of things in this country, yes.

6129. And you think that would be in the interests of morality generally?—Yes, I do.

6130. Then would you mind just telling me, assuming that was adopted as the State view, but not as the Church view, in what respect do you think the Church would be dealing with the interests of morality?—The Church would be dealing with the interests of the highest morality by continually teaching what the ideal relationship is, and saying "my law is much higher than the State's law," and hoping that the community, or at least the best portion, will mount to the standard of the spiritual law.

6131. Although the community for its State purposes had not succeeded in going so far?—Yes, the State can only enforce by coercive action a minimum standard. It has to climb down a bit from the ideal perch. It has been always in that position.

6132. I ought to thank you very much for the interesting and valuable evidence you have given. There is one matter with regard to the long absence referred to in the Reformatio, and it appears rather to be absence for a long time when nothing of certainty is known about the party being alive. That would rather seem to fix it as if it was a kind of presumption of death?—Yes, that seems to me to be what the Commissioners chiefly referred to under this head—desertion was a separate head.

6133. That is what you meant to refer to?—I did.

Adjourned until Friday morning next at 10.30.

Winchester House, St. James's Square, London, S.W.

TENTH DAY.

Friday, 11th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P. (Solicitor-General).
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) I will take this opportunity of mentioning certain documents that the Secretary has received. (*To the Secretary.*) Do you produce a Report of the Royal Commission on the Care and Control of the Feeble-minded?

(*Secretary.*) Yes.

(*Chairman.*) And do you also produce some further communications from the Foreign Office?

(*Secretary.*) Yes; from Berlin, Athens, and Stockholm, from the Ambassadors.

(*Chairman.*) This is the one from Berlin: "With "reference to your circular despatch of the 18th January last, relative to the regulations in force in "Germany, dealing with the publication in the public "press of the reports of proceedings in divorce and "matrimonial causes, I have the honour to inform you "that I have received a Note Verbale from the Imperial "Foreign Office in reply to the enquiry which I "addressed to them on the subject. The Note Verbale "states that, in the absence of special Imperial legal

" regulations, press reports of divorce court proceedings, " are only subject to the general provisions laid down " in the criminal code (Strafgesetzbuch). In this " connection paragraph 184 (*b*) may be noted, by which " a fine not exceeding 300 marks, or imprisonment not " exceeding six months, is inflicted for the publication " of legal proceedings, which, for the sake of public " morality, have been held in camera, or for pub- " lishing from official documents connected with " these proceedings anything which may be of a " vexatious nature." Then there is one from Athens. It refers to the enquiry, and then goes on thus: "I " have the honour to report that there are no such " laws, regulations, nor rules in Greece. Article 14 of " the Constitution, however, provides that any person " has the right to publish his opinions . . . in the " press, provided only that he observe the laws of the " State, while Article 21 of the Press Law of the 6th " to 18th of September 1833, prohibits the publication " of anything hurtful to religion or to public morals. " It would seem that it would thus be possible under " the combined provisions of the Constitution and the " Press Law of 1833, to suppress the publication of " reports of proceedings in divorce cases on the ground " of their being harmful to public morals, but I may " state that in the course of my long experience in " this country I cannot remember ever having seen " such reports in the newspapers." Then Stockholm. It commences formally, and goes on: "I have the honour " to transmit to you herewith a translation of a memo- " randum on the rules and regulations in force in " Sweden respecting the publication of proceedings in " divorce and matrimonial cases, which has been fur- " nished me by the Swedish Government." This is the memorandum: "According to section 2, paragraph 4, " of the statute in force respecting the liberty of the " press, it is expressly allowed, subject to the excep- " tions and conditions herein-after mentioned, that all " proceedings, protocols, and decisions, of whatever " designation or character they may be, in any trial " coming before the Swedish Courts, may be published " in the general press. In the same provision it is " further laid down that the courts shall give informa- " tion without delay concerning the proceedings in " question to anyone who asks for it, and that every- " body, whether he is concerned in the trial or not, " shall have free access to the archives of the court, so " as to be able to take a copy of the proceedings; " Copies of the latter may also be obtained on payment " of a fee. With regard to the restrictions which exist " to the right to publish the proceedings in question, " the following should be noted. A party to a trial " has a full right before sentence or judgment is pro- " nounced, to publish according to his own choice the " petition, complaint, and the accusation. But it is " incumbent on such party to make public at the same " time by means of the press, the declarations of the " opposing party together with the pronouncement of " the court thereon, and the opinions of the individual " judges, so that all that is necessary for a full com- " prehension of the case itself, of its course, and result " may come to the knowledge of the public. Anyone " who has a case pending in court has a right to " have a report printed—called the '*species facti*,' *i.e.*, " a short and accurate written account of the nature " and course of the trial. But he must confine himself " to what is true and proper. It is further laid down " that the protocols and proceedings in cases under the " criminal act which have been settled by compromise, " among which in some respects are included divorce " cases, may not be published as long as any of the " parties are alive, without their consent, or, if the " parties are dead, for 50 years after their death. " Anything in such proceedings which 'is of a dis- " gusting character,' or is highly offensive to modesty, " or which concerns persons who are not parties to the " case, and is unreasonably offensive or defamatory, " may not be published, unless it is so ordered by the " judge on the ground that it is necessary to throw light " on the affair in question. Breach of these regulations " is punished by a fine. The above regulations apply to " the publication of the judge's sentence in the trial, " either in the press or otherwise. The law contains " no provisions concerning the publication of reports " on the course of the trial. But in common with other " publications, and in accordance with the regulations " respecting the freedom of the press, such reports must " not overstep the bounds of decency and morality."

The Hon. LORD SALVESEN called and examined.

6134. (*Chairman.*) You are one of the members of the Judicial Bench in Scotland?—Yes. I am now the senior judge in the Outer House of the Court of Session, there being five judges in that department of the court.

6135. And you have been good enough to take the trouble to look into the questions which we are enquiring into with the view of expressing before us the Scotch law, and to give certain statistics and certain facts relating to the practice in Scotland?—Yes.

6136. Were you called to the Scotch Bar in 1880?—Yes.

6137. And did you take silk in 1899?—Yes.

6138. And were you appointed sheriff of the counties of Roxburgh, Selkirk, and Berwick in 1900?—Yes.

6139. And in 1905 you became Solicitor-General of Scotland, holding that office until later on in the year, when you were appointed Senator of the College of Justice in Edinburgh?—Yes.

6140. And as you say you are now senior judge in the Outer House of the Court of Session?—Yes.

6141. There are five judges there called the Lords Ordinary, and I believe before one or other of them, all divorce cases in the first instance have to be brought?—That is so.

6142. We have heard suggestions about want of uniformity. If there is such a possibility, there are five opportunities for it in Scotland?—Well I should scarcely say so because of course there is also the right of appeal to either of the divisions of the Inner House, and the practice is regulated by the decision of these two divisions.

6143. The first division is presided over by the Lord President, and the second by the Lord Justice Clerk?—Yes.

6144. Now the pursuer—I think that is the correct term—in an action for divorce can select the particular Lord Ordinary and division before whom he proposes to proceed?—Yes.

6145. And sometimes cases are transferred from one Lord Ordinary to the other?—Yes, according to the exigencies of the work.

6146. And also there may be a transfer from one division to the other?—Yes.

6147. That is done by the Lord President?—Yes.

6148. I understand the sheriff courts in Scotland have no jurisdiction in divorce law?—None.

6149. And there has never been any public demand that such jurisdiction should be conferred upon them?—No, and I think the best proof of that is that in the recent Sheriff Court Act of 1907, while provision was made for actions of separation and aliment to be filed in the sheriff court, there was no suggestion that divorce jurisdiction should be conferred on sheriffs.

6150. I think we have heard it said the great bulk of the Scottish population is within easy reach of Edinburgh?—That is so, and I think that we have facilities for poor litigants which remove any hardships there may be. There are a few people resident in the outlying islands, and in the north of Scotland who have not easy access to the Court of Session, but I think they may be regarded as a negligible quantity in a question of so much importance as this.

6151. Then there has been some extension of the sheriff court lately—I think in 1907—in connection with actions of separation and aliment?—Yes.

6152. There is in your view some advantage in divorce cases being tried in the Central Court in Edinburgh?—Yes, for the reason that I think there would be far less uniformity if you had divorce cases tried in all the sheriff courts and also because the judges of the sheriff courts have not had so much experience in connection with matters of this kind, and there is a risk of their not detecting defects in jurisdiction in the court arising from the domicile of the defending party not having been properly established; and also the risk that they might not be able to see through a collusive proceeding.

6153. Have you any intervention by a King's Proctor or analogous officer in Scotland?—We have by the Conjugal Rights Act of 1861. That conferred upon the Lord Advocate the right to intervene at any stage of the cause, and the judge before whom the case is brought may at any time he thinks fit report the proceedings to the Lord Advocate who will then exercise his own discretion as to whether he thinks there is any reason for his intervention.

6154. Is that permitted after the judgment has been finally given?—No. The provision is in the Conjugal Rights Act. I might refer to it. It is section 8 of the Conjugal Rights Act of 1861, and it provides as follows: "It shall be competent to the Lord "Advocate to enter appearance as a party in any action "of declarator of nullity of marriage or of divorce; "and it shall be competent to him to lead such proof "and maintain such pleas as he may consider warranted "by the circumstances of the case; and the court "shall whenever they consider it necessary for the "proper disposal of any action of declarator of nullity of "marriage or of divorce, direct that it be laid before "the Lord Advocate in order that he may determine "whether he should enter appearance therein; and "expenses shall not be claimable by or against the Lord "Advocate with reference to such cases." In that last respect I think our law differs from the English law as recently laid down.

6155. Then there is no other power to come in after a case has been disposed of?—I think not, because when ever a Lord Ordinary has pronounced his decree of divorce he is functus. If, however, there was a reclaiming note so that the case could be brought before one or other of the divisions, intervention might even at that stage be obtained.

6156. By a reclaiming note we are to understand what we in England would call an appeal?—Yes.

6157. At the time of the trial then there would seem to be more necessity for opportunity for watching the case more carefully than in England?—That is my view, because when once the decree is pronounced the Lord Ordinary ceases to have any control of the proceedings.

6158. Then with regard to coming to Edinburgh, you said that the bulk of your population is within reach of Edinburgh. You are not, then, met in Scotland with the same class of difficulty that seems to exist in England of large populations a considerable distance from the centre?—No, that is quite true, and therefore I think there has been no public demand for the jurisdiction in divorce cases being extended to the local courts.

6169. So that that question here has to be considered by the light of questions of expense and so forth which are not quite applicable in Scotland?—Yes. Of course facilities have greatly increased with the introduction of railways and cheap fares as compared with what they were in olden days.

6160. Now one or two minor points before I pass on to something else. You require all the cases to be proved by evidence in courts?—Yes.

6161. You do not rely on affidavits or anything of that character except in cases of necessity?—Well, we never have affiadvits of any kind. No testimony is of any avail in our courts unless it is sworn testimony in open court.

6162. Then in cases of necessity you have a local commissioner appointed?—Yes, generally the sheriff of the local court.

6163. In addition to that have you in Scotland a system of the pursuer swearing what is called the "Oath of Calumny"?—Yes, I have a print of the Oath of Calumny, in which the pursuer of the action swears that he has just cause to insist in the action because he believes the facts stated in the libel are true, and he depones there has been no concert or collusion between him and the defender in the action in order to obtain the divorce.

6164. That is somewhat similar to the affidavit we require to have filed?—Yes, but it is a statement to which he has to swear.

6165. In open court?—In open court before he proceeds with his evidence.

6166. In England an affidavit is required which is not taken in open court?—The consequence of our practice is that if the oath be untrue the decree can afterwards be set aside on the ground of the perjury of the pursuer.

6167. Then your summons must be personally served if possible?—Yes.

6168. But if it is impossible you make an order for substituted service I gather?—Well we make an order of edictal citation, as it is called, which I am bound to say is more or less of a form; but edictal citation is not accepted by the court as sufficient unless there is sworn testimony that it is impossible in any reasonable sense to find the defender, and accordingly we have evidence from relatives and others—persons who are most likely to know of his whereabouts—that they do not know of his whereabouts and have no means of information. That I think was enacted by the Conjugal Rights Act which provides that the court should be satisfied after competent evidence that the defender cannot be found.

6169. I do not think there is much substantial difference between that practice and the English practice?—No, probably not.

6170. Then one other point. In all cases where some other person is named besides one of the parties you require service on that other person?—Yes, that was introduced by a recent Act of Sederunt. It was always the case where the party was sued as a co-defender in the action, and he was then treated in the same way as the defender. But the common case was to name some person with whom the adultery was alleged to have been committed, but not to call him or her as a co-defender, and there was a recent case in Scotland which directed attention to the unfairness to the person charged with an offence of that kind having no notice, and accordingly the court passed an Act of Sederunt providing that notice should be given by personal service, if possible, to every person who was charged with adultery with the defender.

6171. That is whether that person be a man or in the other case whether it be a woman?—Yes.

6172. You proceed in your proof to refer to the possibility, where personal service has not been effected, of a decree being granted where really there might be a defence?—Yes; that is always a theoretical possibility, but as the cases occur only or generally where the ground of action is desertion—the man or the woman having disappeared for many years—it is not likely that there would be any competent defence, and it would be a great hardship if personal service was rendered obligatory, because in nine cases out of ten in actions for divorce on the ground of desertion no remedy could be obtained because the husband who is generally the delinquent leaves concealing his address, and leaves no trace behind him by which he could be tracked. The result of that to poor litigants would be to entirely deprive them of the remedy, if we did not dispense with the personal service, as they cannot employ detectives to search America or Africa or Australia to find the whereabouts of the delinquent spouse.

6173. Do you frequently meet with cases such as you have spoken of, of the defender disappearing to other countries?—They are the typical cases, and I think such increase in divorce for desertion as has taken place during the last 30 or 40 years has arisen from the facility with which people can get away from this country to the colonies and disappear.

6174. When you say "typical" would you say that that formed a preponderating proportion of the cases

before you?—Oh, I should say much more than 50 per cent.; probably at least 75 per cent.

6175. Now, in those cases——?—Of course I do not say that in all these cases personal service is not effected. In a large number of them service is effected because they are in communication with their own relatives, although they have ceased to be in communication with their wives, and they can be traced through their relatives.

6176. But also in a large number they cannot be traced?—In a large number they cannot be traced, especially in the worst cases—cases of people who perhaps have committed crime and disappeared.

6177. They cover up their traces?—They cover up their traces.

6178. Then if it remains as we have it in England, that in addition to desertion adultery has to be proved, you mean in those cases it would be impossible to prove the adultery?—Absolutely, because you do not know the whereabouts of the person. But I should like to say this—I think it is an appropriate stage at which to say it—that really the remedy of divorce for desertion does not largely increase the cases for which the English law already provides a remedy, because if you knew the facts there would be a remedy on the ground of adultery. Where a man has so little regard for his duties as a husband and as a father that he leaves his wife unsupported and dependent upon charity in this country and goes abroad, and starts life elsewhere, if the truth were known it would generally be found that he was living with some other woman, although that cannot be proved or ascertained by the deserted wife.

6179. So that it rather follows that it would not be an unreasonable inference in these cases of disappearance abroad that probably adultery is committed?—I think in nine cases out of ten that would be a reasonable inference.

6180. Then you proceed in your proof to mention a point which is not familiar to us here about reducing the decree within 40 years?—Yes, I think that is a defect in our law. A decree of divorce may be opened up at any time within 40 years after it has been pronounced. That, of course, creates great hardship for who has married the divorced spouse—a man or woman who has married a divorced spouse—after an apparently valid decree has been pronounced, and children have been born into the world on the faith of the union being a legal one. But in practice it creates very little hardship, because we very seldom have reductions of decrees of divorce. I know of only three reported cases in the books of Scotland where an attempt has been made, always by the woman, to reduce a decree of divorce, but in each of these cases she was unsuccessful. However, at the same time, I think it would put the law upon a sounder basis if a decree of divorce should become unchallengeable after a year, which was the ancient practice of the Consistorial Courts in Scotland.

6181. On what other grounds can a pursuer be met with a reduction application, if that is the way to describe it?—Well, his own perjury is one; subornation of perjury by him or his agent is another; want of jurisdiction is a third; and collusion with a defender is a fourth. Perjury of the witnesses is not a ground of reduction of a decree, because that is not a matter for which the pursuer of the action is responsible, but if he suborns a witness to commit perjury, then the decree can be reduced.

6182. But you could not get over the want of jurisdiction, could you? No court's decree would be binding if the court had no jurisdiction?—No; I think that must be so. There must be always that risk; and that is one reason why the question of jurisdiction should be carefully watched, as I think it is, by the judges of the Outer House.

6183. I do not know whether this bears on anything you want to say, but those consistorial actions were tried originally before a special court called a Commissary Court?—Yes.

6184. Its jurisdiction was conferred by Queen Mary in the year 1563, and that was ratified in the year 1592 by statute?—Yes, that is so; and then these Commissaries had certain regulations, and one was that a decree pronounced by them became unchallengeable after a year and a day; but when the jurisdiction of the Commissaries was transferred to the Court of Session it was omitted to be noticed that these regulations were only binding on the Commissaries and not on the Court of Session; and, there being no rule with regard to the unchallengeability of the decree of divorce the ordinary common rule was applied to them under which any decree of the Court of Session can be opened up on certain grounds within 40 years.

6185. You would propose a remedy in cases in which it was suitable?—Yes.

6186. Not the want of jurisdiction cases?—No.

6187. But the others by making the decree irrevocable at the end of a year?—Yes.

6118. Now the next point you have mentioned is that, while the case is pending, the Lord Advocate may have a report presented to him by the judge with a view to an intervention and an inquiry?—Yes.

6189. Upon that, do you find that occasions for intervention are numerous or rare?—They are exceedingly rare; but one reason why they are so rare in Scotland is, there recrimination is no defence to any action for divorce for adultery. That is to say, I suppose, the King's Proctor here intervenes chiefly in cases where the pursuer or plaintiff has not come into court with clean hands and he discovers there has been adultery on the part of the plaintiff which bars his remedy against the delinquent defendant. But then we have a different rule in Scotland. We regard the adultery of the other spouse as being an additional ground for the dissolution of the marriage.

6190. I think that is dealt with further on in your proof?—Well perhaps it is.

6191. I only want to know now if those cases of intervention are rare, and you say quite rare because there is no recrimination?—Yes.

6192. Now passing on. The Scotch judicial statistics were published for the first time in 1869, I think?—Yes.

6193. They contained no classification of the cases, but they do since 1898?—Yes.

6194. Now you have been good enough to prepare some tables showing the points I am going to ask you about; the shorthand writer will have the proof no doubt afterwards so that I need not read every item of them, but I will put a few questions on them. The first is the total number of actions brought for divorce in Scotland from 1898 to 1908. In 1898 there were 153, and in 1908 there were 201?—Yes.

The following is the table referred to:—

The total number of actions for divorce brought in Scotland from 1898 to 1908:—

1898	153
1899	175
1900	151
1901	171
1902	223
1903	201
1904	193
1905	182
1906	174
1907	203
1908	201

6195. Then the total number of actions for separation or separation and aliment brought in the Court of Session from 1898 to 1908 that is not divorce, but separation and aliment is, in 1898, 24; and in 1908, 15?—Yes, it is not a favourite remedy, and is only resorted to by the propertied classes.

6196. The poor classes seek divorce?—Well the poor classes can get very little advantage from a separation and aliment in the ordinary case, because with a man earning wages it is difficult to attach his wages for the benefit of his wife.

6197. Then taking the figures you show, in those cases, that class go for a divorce?—Yes, if there is a ground; if it is adultery, that is the ground of the action for separation. Of course cruelty is no ground for divorce.

The following is the table referred to:—

The total number of actions for separation or separation and aliment brought in the Court of Session from 1898 to 1908:—

1898	24
1899	47
1900	44
1901	39
1902	39
1903	34
1904	31
1905	23
1906	28
1907	21
1908	15

6198. Now the number of applications for divorce or separation refused from 1898 to 1908. Again a table is given, in 1898, 11; in 1908 also 11?—Yes.

The following is the table referred to:—

Number of applications for divorce or separation refused from 1898 to 1908:—

1898	11
1899	18
1900	15
1901	16
1902	13
1903	15
1904	12
1905	17
1906	10
1907	6
1908	11

6199. Now the number of actions for divorce defended and the number undefended from 1898 to 1908. I have only the defended cases here, and the figures are not inserted?—I have the figures now which cost some trouble to extract from the judicial certificates.

6200. Will you give the first and the last?—Yes. In 1898 there were 19 defended actions. In 1908, 22. Undefended, 134 in 1898; and in 1908, 179.

6201. Are those figures now before you?—Yes, I can supply them to the shorthand writer.

6202. (*Lord Guthrie.*) You might take 1902, Lord Salvesen?—In 1902, 25 defended, and undefended, 198.

6203. There were 223 in that year as compared with 201 in 1908?—Yes.

The following is the table referred to:—

Number of actions for divorce defended, and number undefended from 1898 to 1908:—

Year.	Defended.	Undefended.
1898	19	134
1899	28	147
1900	23	128
1901	26	145
1902	25	198
1903	33	168
1904	19	174
1905	26	156
1906	20	154
1907	15	188
1908	22	179

6204. (*Chairman.*) Then the number of decrees of divorce granted in Scotland on the ground of adultery from 1898 to 1908. You have also given and separated those into two heads; first, at the instance of the husband, and then at the instance of the wife. In 1898, 68; at the instance of the husband, 52; and at the instance of the wife, 16. In 1908, total 110; 59 at the instance of the husband, and 51 at the instance of the wife?—Yes.

6205. Those totals will be filled in?—Yes.

(*Lord Guthrie.*) What is 1907, my Lord.

(*Chairman*) 101; 67 at the instance of the husband, and 34 at the instance of the wife. I might take another for example. In 1902 there are a total of 140; 84 husbands, 56 wives.

(*Lord Guthrie.*) Yes, and in 1903, 113 total; and in 1904, 105; whereas there are now 110.

6206. (*Chairman.*) Those are at the instance of the husband or of the wife on adultery alone?—Yes.

6207. But you do not find any increase in consequence of that?—No.

6208. But rather less than they were in 1902?—Yes, and I think generally speaking it may be said that the number of divorce cases as a whole has just kept pace with the rate of increase of population.

The following is the table referred to:—

Number of decrees of divorce granted in Scotland for adultery from 1898 to 1908:—

Year.	For Adultery.	At Instance of Husband.	At Instance of Wife.
1898	68	52	16
1899	94	53	41
1900	80	51	29
1901	107	53	54
1902	140	84	56
1903	113	74	39
1904	105	63	42
1905	101	54	47
1906	105	63	42
1907	101	67	34
1908	110	59	51

6209. Of course I am going to ask you a few questions later on about causes. Now, the number of decrees of divorce granted for desertion by the Court of Session from 1898 to 1908. We will look at that a little more carefully. In 1908 the total is 77—16 at the instance of the husband, and 61 at the instance of the wife. In 1902, 76 is the total; 21 at the instance of the husband, and 55 at the instance of the wife. In 1906, 74?—That should be corrected to 64; I have corrected it. There has been an arithmetical error. 1906 should be 64; 14 at the instance of the husband, and 50 at the instance of the wife.

6210. That is rather less?—Yes.

6211. In 1908, 81; 20 at the instance of the husband, and 61 at the instance of the wife. That 61 is exactly the same as 1898?—Yes.

6212. Those are decrees on the ground of desertion alone?—Yes.

6213. They do not seem to tend to show any material increase as time goes on?—No, I should say relative to the population there has been a decrease.

The following is the table referred to:—

Number of decrees of divorce granted for desertion by the Court of Session in Scotland from 1898 to 1908.

Year.	No.	At instance of Husband.	At instance of Wife.
1898	77	16	61
1899	71	15	56
1900	62	14	48
1901	54	14	40
1902	76	21	55
1903	79	17	62
1904	82	10	72
1905	69	16	53
1906	64	14	50
1907	96	29	67
1908	81	20	61

6214. Then you have a very interesting comparison here of the number of cases brought for divorce in which there were and were not children of the marriage. In 1898, 90 were with children, and 66 with no children. Then take 1902, 147 with children, and

76 without; 1908, 124 with children, and 77 without. Do you draw any inference at all from those figures relating to children, Lord Salvesen?—I draw this inference, that I think they show where there are children the union is strengthened, and parties are more unwilling to have it dissolved. Where there are no children the husband or the wife, there being a valid ground for divorce, is more ready to institute proceedings.

6215. May I ask you to explain that, because the divorces where there are no children are less than where there are children?—Yes, because in Scotland I should say there are probably at least three fertile marriages to one unfertile, so that the ratio is much larger of the people who seek the remedy in the case of childless marriages.

6216. Then the ratio of 77 with the total number of people with children is larger than the ratio of 124 with those who have no children?—Immensely larger.

The following is the table referred to:—

Comparison of the number of cases brought for divorce in which there were and were not children of the marriage.

Year.	Children.	No Children.
1898	90	63
1899	102	73
1900	100	51
1901	101	70
1902	147	76
1903	129	72
1904	125	68
1905	112	70
1906	115	59
1907	119	84
1908	124	77

6217. Summarising what those figures show, you say this: "Having in view the increase of the population "there has been no material increase in the number of "actions of divorce annually brought during the period "in question." You have dealt with them?—Yes, we have only statistics for that limited period, but I see Lord Fraser, who was a great authority on Consistorial law, makes a general statement to the same effect with regard to the whole period during our history that we have had the remedy of divorce for desertion and adultery, and says generally there were as many before the Commissaries at the time they were the only competent court to entertain such actions as there were at the time he was writing, which was perhaps some 30 or 40 years ago.

6218. Then we may take it from that apparently that having regard to population the number of divorces is stationary, or nearly stationary?—Substantially. That is certainly shown by the statistics of the 10 years here, or is demonstrable from the statistics of the 10 years here, which are absolutely complete; and Lord Fraser was the highest authority on Consistorial law that we have had in Scotland.

6219. May I take the further figures that deal with that. "In 1901," you say, "the number of such "actions was 171"—that is for divorce. "In 1908 they "increase to 201; but in the former year the population "according to the census was 4,472,103, while in 1908 "the estimated population was 4,826,587, or an increase "of nearly 400,000 inhabitants"?—Yes.

6220. "In 1908 the number of marriages was 33,000 "and the number of divorces pronounced during the, "same year 201, or considerably less than one per cent. "of the marriages during the year"?—Well, I do not think that is perhaps the best way of arriving at the proportion because the number of existing marriages in 1908, according to the Registrar-General was 700,000, so that the proportion of divorces to existing marriages in 1908 was only one in 3,500, which is after all a very small proportion.

6221. Then you might state what is the point indicated by the next paragraph of your proof?—Well, what I think is this; that these divorces are not in the least confined to the better classes, but are, I should say, in the proportion of 9 to 10 divorces at the instance of people in humble or comparatively humble circumstances. The proportion of divorces of people who were in a profession or in trade is only about 22 out of 202, the remaining applicants belonging to the lower middle or working class, which I should think would be very different from the statistics in England, owing to the expense involved in obtaining a decree of divorce in the English courts.

6222. Now you are good enough in your proof to deal with the question of procedure. This we should like explained a little fully. You have a procedure for persons suing *in formâ pauperis*?—Yes.

6223. That rests on the Statute of 1424, c. 45, passed in the reign of James I. of Scotland?—Yes, we have always had provision made for the conduct of litigation by poor persons, and facilities afforded to them for obtaining justice without expense to themselves.

6224. Yes, well we want to work this out. You say in the modern practice the various legal bodies appoint representatives to act for the poor?—Yes.

6225. That is to say the Faculty of Advocates appoints six persons annually?—Yes.

6226. And the Writers to the Signet and the solicitors of the Supreme Courts also select eight solicitors to act for the poor?—Yes.

6227. Are all those 14 people in Edinburgh?—Yes, but there are similar provisions with regard to all the local bodies.

6228. Who also elect some solicitors of their number to act as agents for the poor?—Yes, and they conduct the cases in the sheriff courts for the poor.

6229. That in the country would be confined to the solicitors?—Yes.

6230. (*The Archbishop of York.*) Does that apply to Aberdeen?—Well, the advocates in Aberdeen are really solicitors, though under an ancient charter they have the privilege of calling themselves advocates.

6231. (*Chairman.*) Have they a right to plead in the Supreme Court?—No.

6232. Then in Edinburgh you have two advocates and two solicitors appointed to act as reporters. Is that right?—Yes, they have to investigate whether the poor litigant has really a *primâ facie* case, so as to prevent vexatious or frivolous actions being brought by poor litigants.

6233. To report on the *probabilis causa litigandi* for the poor?—Yes.

6234. Are those the six you have mentioned?—No, they are generally advocates of longer standing, and they hold office sometimes for a considerable period and get very familiar with the work of this court which plays a very useful part in connection with this system.

6235. Who selects those?—They are selected also, I think, by the Faculty of Advocates.

6236. Then all these gentlemen you have mentioned act gratuitously?—Yes.

6237. And there seems to be no difficulty in getting members of the two branches to undertake this work?—No; I think now the advocates who are appointed are men of six or eight years standing at the Bar; they can refuse the appointment if they choose; they are not compelled to take it, but in the majority of cases we find they are glad to have that introduction into practice which is involved in conducting cases in the Supreme Court, even for a poor litigant.

6238. I gather the advocates are not asked to serve continuously, but for a year at a time?—Yes.

6239. The advocate may decline, but I daresay they do not generally do so?—Very seldom I think. Very few men have so much practice after five or six years at the Bar, that they find it inconsistent with their practice to accept an appointment of this kind. No doubt there are some cases of that kind.

6240. While these advocates and solicitors act gratuitously, what happens if a case in which they have acted, is a case in which the party they have acted for is successful?—In that case, and the defender has

means, both the solicitor and counsel are paid according to the usual professional scale, and therefore they do not act entirely gratuitously in that sense, though gratuitously with reference to their own client, from whom they can receive nothing.

6241. How do you find this practice works?—I think the work is very well done. I have never had any cause of complaint, so far as the advocates are concerned, against the way in which the case was conducted. Sometimes there has been a certain slackness on the part of some of the agents for the poor, but if that is reported to the court it would be promptly dealt with.

6242 May I ask you this. You said the two advocates who consider the cases are not two of the six who conduct?—No; nor are the other two solicitors who are associated with them.

6243. What is the object of the separation there?—These four gentlemen form a court, and I suppose it was thought that it would be better to have both branches of the profession represented upon this court. In the case of a division of opinion, the chairman, who is an advocate, always has a casting vote.

6244. But why do you separate the four persons, two advocates and two solicitors, from the six and the eight who conduct the case?—Oh, because they are to act as judges in the case the others are conducting.

6245. Then you mean it is just to see if there is a probable case, and then they are at liberty to report to those who are to conduct?—Yes, but the material on which they proceed is submitted to them by the counsel and the agents for the poor. That is to say, what we call the precognitions are taken by the agents for the poor, and the solicitors for the poor attend before this tribunal and ask that they may certify that there is a probable cause of action. They consider, therefore, the papers that are brought under their notice, and they may hear the defender who is entitled to appear before them and urge that there is no probable cause of action, so that he may not be harassed by a frivolous litigation; and having heard both parties they then report whether there is a probable cause of litigation or not.

6246. To whom does that report go?—They report to the Second division of the Court of Session, and their judgment in that matter may be revised by the second division, and the defender who has an action against him is interested in urging that the case be thrown out.

6247. Are the parties heard then?—They may be heard in person or through their solicitors, as they like.

6248. Assuming then the report is that this is a case that shows a probable cause, is it after that that one of the eight solicitors and one of the six advocates is asked to conduct?—Yes, and he is appointed by the Second division at the time that the report on the *probabilis causa* causes is made; but of course they generally select, at all events, the solicitor who has been concerned with the getting up of the case for the report and remit to him; but technically the Second division select the agent and the counsel who are to conduct the other man's cause.

6249. The object of separating those who investigate as to a probable cause from those who conduct it, is that one set sees if it is a right case to go on with, and then the other class conduct it?—Yes.

6250. Then what happens with regard to the out-of-pocket expenses—the fares of witnesses and so forth?—Well, there is no public provision made for these, and as a rule the parties have to provide them themselves; but in an ordinary action for divorce they may be taken as representing a very small sum—probably 4*l.* or 5*l.* would on an average cover the whole of the out-of-pocket expenses, because the only out-of-pocket expenses are the travelling fares of the witnesses, and if need be a fee to the witness.

6251. Would that apply if the witness came from Shetland or John o' Groats?—No, I am afraid it might be more.

6252. Then this goes back to the question of the majority of your population being within easy reach?—Yes, but if they come from Shetland or Orkney there are cheap facilities for coming by steamer.

6253. Well I suppose Skye is in this jurisdiction?—Yes.

6254. Supposing the other person is in Skye, how does he get the advisory body to get his case certified as a probable case?—Oh, he applies to the poor's agent of the district and the poor's agent of the district communicates it to the poor's agent in Edinburgh who has the right to practice in the Supreme Court.

6255. He transmits all the facts?—Yes.

6256. In order to found his submission whether it is a probable cause or not?—Yes, just as in the ordinary litigation the country agent gets up the case and transmits it to the Edinburgh agent. There are no court fees exacted in the poor's cases, and no stamps, and the shorthand writers act gratuitously.

6257. Might I ask one question. Who passes finally the certificate that it is to go on the poor's roll?—Well, all the procedure I have been speaking of has to be preceded by a certificate obtained by the pauper litigant from the minister and two elders of the parish in which he resides. That certificate certifies, amongst other things, that he is a person who has no means, that he has no other litigation pending in court, and some other matters which are not of very much importance. The minister and elders must grant that certificate unless there is a good ground for refusing it in their judgment, and they are supposed to have the local knowledge necessary to judge of the man's or the woman's circumstances.

6258. Is that a preliminary to going to the local poor's agent?—That certificate is submitted to the local poor's agent.

6259. Without that they cannot start?—No.

6260. After that is there any certificate personally of the agent's or of anybody else, that they may proceed on the poor's roll?—Yes, after they have passed the reporter of the *probabilis causa litigandi* of litigation, then there is a certificate that they may be admitted to the poor's roll.

6261. Then what is the amount for which the certificate can be obtained?—I should say, speaking generally, a man must not earn more than twenty shillings a week in order to entitle him to the benefit of the poor's roll. In a case where he earned twenty-three shillings a week the Court did admit him, but on special grounds, namely, that his wife was living apart from him, and he was anxious to institute an action for divorce and that he had been left with the burden of the children of the marriage, and had had to hire a person to take care of these children in consequence of his wife's defection. They held that it was a sufficiently strong reason for admitting him to the poor's roll, though he was earning more than the amount which is generally considered the limit.

6262. These two cases you mentioned, Robertson *v.* Robertson, 1880, 7th Reports, 1902, and Christie in 9 Shaw 169. Those are the reports of cases on that point?—Yes, I was mentioning the facts really of Robertson's case which was the last decision on the judgment.

6263. If we look at those reports we find judgments given showing the grounds on which they were given?—Yes. Speaking for myself I may say I think it might be worthy of consideration, whether the wages earned might not be a good deal more and yet the applicant be entitled to the benefit of the poor's roll. When the limit generally recognised was introduced money was a great deal more worth than it is now, and a man who earned twenty shillings was considered in a comparatively good position. Now it is only a labourer's wage.

6264. You have told us very clearly indeed, I think; but if the reporters refused to pass a case there is an appeal to the second division to hear counsel on the point?—Yes, so that the poor man has really the same protection as the most wealthy litigant, because he can get a judgment in our Supreme Court upon the question whether he ought to be admitted to the poor's roll.

6265. I think that pretty well exhausts the statement of this system. Now, another point about the

wife being pursuer. She may apply to the Lord Ordinary for payment from her husband on account of expenses?—Yes.

6266. That is somewhat analogous to our system?—I should fancy so.

6267. Then the court fees or fees to the counsel, &c., are charged. I suppose that is granted where it is shown there is a good case?—If there is any *primâ facie* case at all she gets an award to carry on the case.

6268. Why do you state in your proof that applications are seldom made in those cases?—For the reason that if the husband is well-to-do, the wife has no difficulty whatever in getting a solicitor to take up her case upon the ordinary footing because the husband must pay her expenses if she has a probable cause of action.

6269. Just as much as if the husband had instructed a solicitor?—Yes.

6270. But in the poor case why are they not made?—Because there is no use in making them. The wife is only admitted to the benefit of the poor's roll if her husband is a person who is not in receipt of the necessary amount, and accordingly no object would be served by trying to get a decree against him.

6271. Do your statistics show the number of cases in which the pursuer has sued in *formâ pauperis*?—No they do not show that, but I have had the matter investigated in my own court and I believe Lord Guthrie had the same investigation made in his. As far as my own court was concerned I found that in 1906, 11 out 54 divorces which depended before me were at the instance of persons on the poor's roll. In 1907, 8 out of 62; and in 1908, 4 out of 26. In Lord Guthrie's court the proportion during the same years were much higher, namely, 19 out of 55, 31 out of 90, and 15 out of 62; and of the 65 pursuers admitted to the benefit of the poor's roll 48 were women and 17 men.

6272. Still those figures show a very substantial proportion of divorces granted, as being granted to persons on the poor's roll?—Yes.

6273. From a quarter up to a third?——

(*Lord Guthrie.*) Mostly women.

(*Witness.*) And these may be taken to be persons in the very humblest rank of life.

6274. (*Chairman.*) Without that machinery they would not have been able to come to the court?—Absolutely impossible.

6275. Now I should like to ask you, in your courts where the litigants are not on the poor's roll are you able to say anything about costs which would be incurred?—Well, I think they vary much according to the ability of the party to pay. In an undefended case I believe it is quite common for some to undertake to conduct it for a restricted fee of about 10 guineas exclusive of witnesses' fees and expenses.

6276. What are the expenses?—I mean expenses of witnesses.

6277. And court fees?—No, the fee of 10 guineas would include the court fees which are small.

6278. And counsel?—And counsel. But when the ordinary professional scale regulates the matter the costs of an undefended case will amount to 25*l.* or 30*l.* apart from outlays to witnesses.

6279. When you get to defended cases it is difficult?—Oh, you cannot tell.

6280. It depends on the nature of the fight?—Yes.

6281. I believe the system you have stated to us works in your view satisfactorily?—Yes.

6282. And there are no proposals for improvement?—No, I think it works with great smoothness; one hears of no complaints.

6283. And you say your poor system "renders it "unnecessary to consider the question of extending "jurisdiction in Scotland to local courts"?—I say that for this reason. Persons who cannot scrape together four or five pounds to meet the necessary outlays are comparatively rare. Even when they cannot get it themselves their friends very often assist them to get the small amount necessary to bring the witnesses to Edinburgh; the witnesses themselves I should think frequently attend at their own charges being anxious to assist a poor man or a poor woman to obtain a legal remedy.

6284. I notice you say in your proof, persons who cannot provide the small outlay are quite indifferent as to whether they get divorce or not?—I think that is the case with the men certainly; not in the case of the women, because the extent to which they do utilise the poor's roll shows they are not indifferent.

6285. But in the case of men you mean they would live with another person without troubling about it?—Yes, that one knows to be very frequently the case.

6286. You say here "those who apply for divorce "amongst the humbler classes are the respectable poor "who value their reputation and who desire to enter "into a legal marriage with some other person; or in "the case of the husband, to be relieved of the "burden of supporting a delinquent wife"?—I think that represents the two general classes of cases.

6287. Then you mention there are some cases of hardship remaining even in Scotland?—Well, I think they are hardships for which we are probably able to provide a remedy ourselves. Where a man has a moderate amount of property, he may be a clerk earning 200*l.* or 300*l.* a year or something like that, and he cannot get on to the poor's roll; but his wife is entitled to defend the action at his expense, one finds unfortunately that very large bills of costs are run up in these actions, although there is no real defence, and one would like to see some restriction of that practice which undoubtedly is a bad one and results in the unfortunate man, after he has obtained his decree, being saddled with two bills of costs which are enough to ruin him.

6288. Does she apply while the case is going on for security for costs?—She gets a payment to account.

6289. Is there any check on the person defending when there is no defence by having to swear to the defence or anything like that?—No, but the court refuses to grant at the end of the day an award of expenses to a guilty wife when the court are of opinion that no defence should have been stated; as for instance where she has registered the birth of a child as illegitimate, and therefore knows perfectly well there is no truth in the defence.

6290. But that is the final hearing?—Yes.

6291. But does she get an order for payment of costs to enable her to defend the case before you get to the final hearing?—She does, but on a very restricted scale, only to enable her agent to disburse the necessary outlays.

6292. Do you require any step to be taken to get that on an affidavit?—Yes, that is done on a motion before the Lord Ordinary, in the motion roll, and is generally opposed on the question of amount. If she appears to have a reasonable ground of defence she gets it as a matter of course.

6293. But is that application treated upon affidavits?—No, only upon the statement of counsel and upon the pleadings.

6294. (*Lord Guthrie.*) In open court?— In open court.

6295. (*Chairman.*) My recollection is that we have introduced in England a practice of requiring the wife and the solicitor, if she requires money to go on with, to swear she has a defence?—Yes, well substantially we have that, because counsel would not make such an application if he thought a case was absolutely hopeless upon the information he has.

6296. But of course he might not know?—Our theory is that the woman is entitled to establish her innocence if she can at the expense of her husband, and if she has at all a reasonable ground of defence.

6297. That is so in England?—Yes.

6298. But it may be necessary to have some check on it to prevent great abuse?—Yes. I do not find it very much abused with us. The great hardship is in cases where there is a reasonable ground of defending, and where costs are piled up because it is well known that the pursuer must pay them at the end of the day.

6299. Now supposing the wife is pursuer, is there any grievance there?—It is the same grievance where the wife institutes an entirely unfounded action of divorce, because if she states her case so that it presents

a *primâ facie* case she is entitled to get interim awards in order to enable her to prove it to the court.

6300. Do you find the oath of calumny is any check on that?—Well, that is only when it comes to proof, and I am afraid the oath of calumny does not exercise any real check.

6301. You do not require any solicitor to support the oath of calumny by an affidavit of his own?—No. Of course, if the person is prepared to commit perjury with regard to the facts, he or she is prepared to commit perjury with regard to the oath of calumny.

6302. Then you state you have some proposals in consideration for restricting these expenses?—Yes, I laid some proposals before the head of the court some time ago, which are under consideration for restricting these expenses when the person has a limited income or only a moderate fortune.

6303. Now we pass on to another part of your proof. The Scotch courts have exercised divorce jurisdiction since 1560?—Yes.

6304. Prior to that I take it there would be only the Ecclesiastical courts?—Yes.

6305. And you have exercised that both on the ground of adultery and desertion?—Yes.

6306. What is the difference in Scotland between men and women?—Absolutely none. They have exactly the same rights before the law.

6307. Have you found by experience that that has worked well?—I think it has worked very well. Of course, I know quite well there are many reasons alleged why the same law should not apply to husbands as applies to wives, and I quite appreciate the force of these, for physiologically there are differences, and public opinion has always regarded the chastity of men as of less importance than the chastity of women, and even female opinion regards the ante-nuptial incontinence of men in a very different way from that in which it regards the incontinence of women. But for all that, I think in practice our law works extremely well, because we do not find that women as a rule take proceedings against their husbands for what may be called casual acts of adultery, but only where the marriage relation has become intolerable upon other grounds, and I think you will find that borne out by the statistics where a considerable majority of actions of divorce for adultery are at the instance of men, although I think it may be safely inferred there are far more women who are injured in that respect than there are men; and accordingly, in practice, we do not find that the woman rushes into the divorce court if she is on otherwise good terms with her husband, and has regard for the unity of the family, because of a lapse from virtue on his part. At the same time I think she should have the remedy if she desires to exercise it, and that in many cases it operates very much in the direction of promoting public morality.

6308. Just to get this a little clearer, because it is an important point. Your tables show that the larger number of charges of adultery are at the instance of the husband?—Much the larger.

6309. Although as you are pointing out, as I follow you, the probabilities are that the husbands have been more unfaithful than the wives?—Yes.

6310. And therefore if the suit was by the wife frequently taken by the wife on the ground of adultery there would be greater opportunity of taking it than if it was by the husband?—Yes, I should say very much greater opportunity.

6311. But you do not find that actually done?—No.

6312. Then in actions of desertion the majority of pursuers are wives?—Yes.

6313. I will ask about that later on. I should like to get from you how you think the fact that a wife can sue for adultery alone acts as a deterrent?—Well, I think for this reason. If she has no remedy for adultery on the part of the husband, practically it amounts to giving him a licence to commit adultery so long as he does not combine with that cruelty or desertion. He can defy his wife's remonstrances or disregard them entirely. Whereas if he knows that she may dissolve the union and bring him into court it exercises a most powerful deterrent. Not merely that, but the decree of divorce pronounced against the husband operates exactly as his death and the wife is at once entitled to the same share of his estate she would be entitled to when he died.

6314. What is that in Scotland?—In Scotland if there are children she would be entitled to one-third of his movable estate and a life-rent of one-third of his heritable estate.

6315. Who takes them otherwise?—The children would at the death of the father, but they take no benefit from the divorce. But if there are no children then the wife takes one half and a terce which is a life-rent of a third of his heritable estate.

6316. So if she can institute a case for divorce on the ground of adultery she not only gets free from him but takes a portion of his property?—Yes, and takes half of the movable estate if there are no children.

6317. And that is a strong deterrent?—Yes.

(*Lord Guthrie.*) And probably she gets the custody of the children.

6318. (*Chairman.*) I was going to ask one further question. What powers have the courts to decree in such a case as that provision for the children?—Oh, if the wife is awarded the custody of the children, which if she is a sucessful pursuer, she is *primâ facie* entitled to, she gets an award of aliment for each child she has with her.

6319. That is in addition to her one-third?—In addition to the share of her husband's estate; but the courts very often divide the children unless the moral character of the father is such as to endanger their upbringing.

6320. I suppose they have a general discretion in the interests of the children?—They have a complete discretion in the matter; the only thing one can say is the sucessful pursuer in an action for divorce, whether a man or a woman, has *primâ facie* the right to the custody of the children.

6321. Well, I need hardly ask you, but you regard the Scotch law as better than the English?—I do.

6322. Has there been any general indication of feeling in Scotland for a change in that respect?—I have never seen any suggestion to that effect in literature or the public press, though we have had this law in full operation and vigour since 1560 as part of the common law of the country; because it is not statute law—the right of divorce for adultery.

6323. I see you sum up this point by making a general observation upon it. Perhaps you will kindly tell us what you have to say in general?—Well, I should say, in the first place, that with regard to legal opinion and the opinion of my brethren on the bench, I think I am expressing their opinion on this matter entirely. I have had an opportunity of submitting my proof to the present head of the court, and he authorised me to say that, so far as it deals with matters of opinion, he is in entire accord with it. With regard to the other points, I think that our law conduces very much to the morality of husbands and to the peace of families, because it is much better that an offence against the conjugal tie on the part of the husband should be a matter for forgiveness on the part of the woman than that she should have no remedy for it.

6324. I am not quite sure whether the next point I have to ask you would not be better brought in here than dealing with the publication question, if you would kindly turn on to the question which we are dealing with of the possible extension of the grounds of divorce. You state here that in Scotland, as in other Roman Catholic countries (at that time, I mean), divorce was not allowed prior to the Reformation?—That is so.

6325. But after that adultery was introduced as a cause for divorce without statute. On what ground?—Well, apparently upon scriptural grounds, and I think one can explain it in this way, that the Roman Catholic Church treated marriage as a sacrament. When the Reformation came there was a change of opinion upon that matter, at all events in Scotland, and marriage was no longer treated as a sacrament. Therefore, it came to be regarded from the point of view of a contract which might be dissolved so far as

that could be done consistently with public morality, and at once, apparently, divorce for adultery was introduced.

6326. Was that introduced by statute?—No, not originally. It has been recognised by an early statute, but as an existing institution.

6327. Was that introduced as a ground for divorce simply, by the Scottish courts at that time?—I fancy so, and by public opinion treating the bar which previously existed to the dissolution of marriage as non-existent in consequence of the triumph of the reformed principles.

6328. It wanted no statute then to start with?—No statute at all. It may be interesting from the point of view of the origin of divorce for adultery to see what is said by Lord Fraser on the subject. He refers to the early statute in which it is mentioned.

6329. Perhaps you would give the reference?—Yes; page 1141 of Fraser's book, second volume.

6330. Is that Fraser on Husband and Wife?—Fraser on Husband and Wife. The only statute which can be said to recognise it is one of 1563, and it contains this single paragraph: "Also declares that "this Act shall in nowise prejudge any party to "pursue for divorcement for the crimes of adultery "before committed conform to the law." So it does not enact that that shall be a ground for divorce, but recognises it as an existing institution.

6331. Then do you mean that that simply became the law of the country by the introduction of the Reformation principles?—I think so, having in view the passage in the Sermon on the Mount, which seems to make it in accordance with scripture.

6332. I should like to have it accurate. Was that jurisdiction exercised by the secular courts?—It was exercised by the Commissary Courts. They were originally Ecclesiastical Courts in Roman Catholic times, but they continued to fulfil all their previous functions, and in addition they entertained actions for divorce after the Reformation. They entertained actions for separation and aliment, and adherence always, and also they dealt with questions of succession.

6333. Then a few years afterwards there was the statute which dealt with desertion?—Yes.

6334. Would you give us the history of that, and what it amounts to?—Well, the history of the Act is not very creditable, because I think it was introduced really for the benefit of an Earl of Argyll who wished to get rid of his wife. He had married the half-sister of Mary Queen of Scots, and she had deserted him, and he could not induce her to return. He employed every method that he could think of to get her back, and she declined to return to his society, and then ultimately this Act of 1573 was passed, I think, specially to meet his case.

6335. What are the terms of it?—It is expressed very archaically, but it practically——

6336. What I wanted to know was, whether it was a new departure, or only recognising an existing state of practice?—Well, it does seem to show that divorce for desertion was open to an aggrieved spouse at the time, but I do not believe that is in accordance with history, although one may take from that that it was in accordance with the public opinion of the time, or, at all events, of the Parliament who passed the Act; that they regarded it as a ground of divorce.

6337. Have you got it?—Yes; it is to be found in Fraser's book, volume 2, page 1560. 1573 is the date of the Act, and it commences with a preamble which justifies the view that this remedy had been previously in use. It says "That in all times past since the true "and Christian religion was publicly preached, avowed, "and established within this realm, namely since the "month of August, the year of God one thousand five "hundred and sixty years, it has been, is, and in all "time coming shall be lawful that whatsoever person "or persons joined in lawful matrimony, husband or "wife deserts from the other's company without a "reasonable cause alleged or deduced before a judge, "and remains in their malicious obstinacy for the "space of four years, and in the meantime refuses all "preuie admonitions, the husband of the wife, or the "wife of the husband, for due adherence, that then the "husband or the wife shall call and pursue the "obstinate person offender before the judge ordinary "for adherence; and, in case no sufficient causes be "alleged wherefor no adherence should be but that the "sentence procedes against the offender refused to obey "same, the husband or the wife shall betake themselves "to the superior magistrate, or the lords of session, "and shall obtain letters in the four forms conforme "to the sentence of adherence; which charge being "contempt therefore being denounced rebel and put to "the horne. Than the husband or the wife to suit the "spiritual jurisdictioun and power, and require the "lawful archbischop, bischop, or superintendent of the "country where the offender remains to direct preuie "admonitions to the said offender admonishing him or "her as before for adherence." And then it goes on to describe the various ecclesiastical and civil methods by which the delinquent spouse should be admonished before the action could be brought in the law courts. All these preliminaries to a divorce being obtained have now been abolished by the Conjugal Rights Act of 1861 so that on the lapse of four years of wilful and malicious desertion the deserted spouse may at once institute an action without any further proceeding.

6338. Those previous provisions were to make them come back and so forth?—Yes.

6339. And failing in the end a decree went through?—Yes; but not only were the civil authorities appealed to, but the ecclesiastical, because the offender was to be admonished by the minister of the parish, and by other ecclesiastical dignitaries.

6340. Well, steps were taken to try and bring the offender back?—Yes.

6341. But if he still adhered to his desertion the pursuer obtained relief?—Yes.

6342. Now, without those preliminary attempts, at the expiration of four years, the decree can proceed?—Yes, but the substance of the remedy remains the same.

6343. The substantial point remains the same?—Yes.

6344. And the divorce for desertion would not be granted merely because they have been living apart for four years, but it must be a wilful desertion?—Yes, a wilful and obstinate desertion, continued in without the consent of the other spouse.

6345. The exact term you use in Scotland is malicious desertion?—Yes.

6346. Commenced and continued without the pursuer's consent?—Yes.

6347. You have to be satisfied with that?—And against such remonstrance as the court thinks could reasonably be made.

6348. And without lawful ground?—Yes.

6349. And you require the pursuer to be ready to resume cohabitation?—Yes, at present that is the law.

6350. You say at present?—Well, I think for myself—and I am speaking also for the judges of the Court of Session so far as I know—that it is a defect in our law (an anomaly) as it at present exists, that a person who has been grossly outraged by the ill-treatment of the deserting spouse should have to come into court and say that he or she all along desired that the deserter should return. We think there are exceptional cases in which that should not be exacted, if the person who has been so ill-used or made so unhappy in the union that it cannot be reasonably supposed that he or she felt anything but relief when the other deserted. But, of course, the essential preliminary must be that the desertion takes place without the consent or connivance of the deserted spouse and is the sole act of the delinquent.

6351. But you think an amendment might be introduced, making it not necessary to intimate a desire to resume cohabitation?—It seems to me that it is the person who is in delinquency who ought to make an overture to resume cohabitation, and it cannot be expected of the person who has been deserted that he or she should take steps to bring back the erring spouse.

6352. I see you refer to Watson *v.* Watson, 17 Rettie, page 736; and Hodges *v.* Hodges, 1908,

Sessions Cases?—Yes, that is the latest series of Scotch Reports—page 148.

6353. Has that remedy for desertion been recognised in Scotland universally since it was instituted?—Oh, it has been in use from the earliest period and throughout the history of our law.

6354. What does your experience lead you to state as to the operation of that law?—Well, I think it is entirely beneficial. I think, in ninety-nine cases out of a hundred, at all events, that malicious desertion is a much graver violation of the conjugal vow than infidelity, because it presupposes no regard whatever for the conjugal obligations. The deserting husband—and he is generally the defaulter—leaves his wife after a course of ill-treatment, because she and her children have become burdensome to him, and goes away to make his way somewhere else. He leaves the wife to subsist upon charity or on her own exertions. She is often left in a state of complete destitution, and nothing more is heard of the man, who may be prosperous and earning money elsewhere, and yet never thinks of remitting anything for the support of his wife and children. Well, that is a typical case of desertion, and I think it involves far greater violation of the conjugal duty than mere infidelity, however important that may be. Lord Fraser puts it in this way. He says that: "malicious desertion is as manifest a violation of "the conjugal vow as adultery and in expediency and "justice it ought to be visited with punishment "equally heavy with that meted out to adultery." Well, I go beyond that, and I think it is much worse than the ordinary case of adultery, because, after all, a man may be unfaithful and yet not neglect the interests of his children. A man who deserts his spouse and leaves her to support herself and the children is violating every obligation of social morality.

6355. You point out in your note that you do not consider yourself competent to discuss the question of how far such a remedy can be regarded as scriptural or unscriptural, but you have some comment to make upon that point?—Well, I have this comment to make, that although the Church of Scotland, since the Reformation, has been at times Episcopal—at all events, for 30 years was Episcopal—and for the rest of the period has been Presbyterian, and though the Presbyterians have split into numerous sects, there has never been any section of the Reformed Church of Scotland which has objected to the remedy of divorce for desertion. Now, our Presbyterian Church maintains that its views are founded on the scriptures, and, therefore, it must be assumed that it found the law of divorce for desertion was, at all events, consistent with scriptural authority.

6356. During the time you have referred to, which I think was 1660 to 1690 of the Episcopacy, are there any instances that you can trace where grounds of desertion alone were acted upon by the courts?—I have not gone into that myself, but I should think that a book that Lord Guthrie has shown me will contain statistics on that point.

(*Lord Guthrie.*) It is this. It is a book just published giving the Consistorial Judgments from 1558. (*Handed.*)

6357. (*Chairman.*) Is there anything in this book we cannot follow for ourselves?—I should think not. I may say, that so far as my knowledge of history goes, although there was a change from Presbytery to Episcopacy, and back again from Episcopacy to Presbytery, there was never any substantial change in the creed of the people; it was a mere question of church government.

6358. Is it the fact that the majority of marriages in Scotland are performed by one church or the other?—The vast majority. No doubt a certain number are not, but the so-called Scotch marriages of which one hears so much in England, represent about one in a thousand of the marriages celebrated annually; and therefore may be treated as relatively unimportant except for the particular parties involved.

6359. What is the general view in Scotland with regard to the way in which these grounds of divorce are looked upon?—They are favourably commented upon by all our leading institutional writers, and Lord Fraser says on page 1141: "The conjugal relation has "stood not less, but infinitely more secure and sacred, "since separations *a mensa et thoro* for adultery, "which were extremely common under the Popish "jurisdiction, fell into total disuse; and the number "of actions for divorce *a vinculo* has, in proportion to "that of the population, remained nearly the same at "all periods since the Commissaries were first appointed in 1563, down to the present time." And another authority on the law of husband and wife, Professor Walton, says, "Public feeling is strongly against "increasing the number of persons living as if single, "and yet not free to marry: husbands without wives "and wives without husbands." I think these authors have expressed what is the ordinary view in Scotland, and what seems to me to be consistent with common sense.

6360. What does your own experience lead you to as a conclusion about separation without dissolving the tie of marriage?—I think they invariably lead to the persons just leading their own lives and not having any regard for chastity at all. I think when you deal with a large body of the population, if a man (because it is nearly always in cases of separation and aliment that the action is instituted by the woman) is turned out of doors, so to speak, he consoles himself with other female society.

6361. You would be averse then to a law which allows separation (on proper ground I mean) without making it a complete divorce?—Yes. Of course it is always in Scotland in the option of an injured wife to sue an action for separation if she pleases, and among the propertied classes, they do take that course when they desire to have a fixed income from the husband. I have known of cases where the woman has first brought an action for divorce and then dropped it and brought a separation and aliment action because she was afraid she would lose her only means of subsistence if the marriage tie did not remain, but that is in the option of the woman always.

6362. Would you leave her with that option in the interests of people generally?—Yes, I think she might be left with the option because it is not exercised except in cases where really there is a greater necessity for her that she should have a maintenance.

6363. But supposing provision were made afterwards, if she got a complete decree she should have maintenance in the same way as on a separation decree; would you think it desirable, or not, to give a respondent the right to insist on the claim being made as a complete divorce, and not restricted to mere desertion?—I think there are considerations both ways. In the first place, certainly, the present system obviates the possibility of people getting collusive decrees of divorce; because the guilty husband—we will say in this case—can never know whether his wife will really divorce him, or whether she will only bring an action of separation and aliment against him, and, therefore, he can never know whether she will set him free to marry the paramour, and, accordingly, from the point of view of a deterrent to immorality, the option that women now have of either bringing an action of separation and aliment, or an action for divorce, is a valuable one.

6364. Following out the line of thought you expressed just now, if she chooses to take the decree of separation, the separation would leave the husband to go his own way would it not?—It would, but he cannot enter into a legal union.

6365. Do you think that would be an advantage?—Not in the ordinary case, I admit, but I think, from the point of view of a deterrent to immorality, that it is well that she should have that option. After all, she has the option even as it is; I mean she need not bring an action for divorce at all. She may prefer to retain the marriage tie.

6366. Now, you pass on to deal with cases of collusion. What is it you desire to say about those?—Well, I think in the first place that collusion is extremely rare. So far as my own experience goes, I do not know of any case in which I could say I was sure there had been concert or collusion between the spouses.

6367. How do you find, as a result of your experience, that that is correct with regard to cases of husbands and wives in the humbler ranks of society?—I think it is out of the question in the humbler ranks of society because, take the case of divorce for desertion—the parties must have lived apart for four years. Well, no married woman who had a husband capable of supporting her would be content to allow him to remain away from her four years, giving her no maintenance (because that is essential in an action of divorce for desertion) in order that at the end of that four years she might divorce him. In the same way, no man would support his wife secretly, remaining absent from her, in order that he might—so to speak—stop her mouth from raising any objection to his pursuing an action for divorce against her. I think you may say that collusion in actions of divorce for desertion is unknown in the humbler ranks of society. I can conceive of it in the upper ranks of society where they desire to have a union dissolved without scandal, but personally, I know of no such cases, and it could only be possible where both parties had property and were able to live independently of each other.

6368. Taking your law as it is, do you find by experience there is collusion in the upper classes on this point?—I have not known of any case. I think it is conceivable there might be such a case.

6369. You mean, the people are generally acting adversely to each other?—They are nearly always acting adversely to each other. The typical case of a man suing for divorce on the ground of desertion is this, and I had an instance of it the other day. He marries, and after a while the wife is discontented with her position. Very often she has married a man in humbler life and has to perform duties which she dislikes, and she thinks she can either do better for herself and earn more money than as the wife of a working man, or she goes home to her own relations and she repels all his efforts to bring her back, and remains away. She is tired of marriage. In such a case the unfortunate husband has no remedy but a divorce for desertion. I had a case the other day where a lady's maid of 41 married an under gardener of 29 with a wage of 19s. a week. She found it was highly unpleasant to her to be doing work of a domestic kind that she was not accustomed to. After a year she left him and nothing would persuade her to return. She had fairly well-to-do friends, and she started nursing as a trained nurse and was making, I suppose, twice as much as her husband; and after some 10 or 12 years the husband, having done everything he could to bring her back without success, brought an action of divorce against her, having in the meantime got the position of head gardener, and, no doubt, being anxious to enter into another union; and of course I gave him his decree. That is a typical case from the man's point of view. From the woman's point of view I have already mentioned what the typical case is. A drunken husband disappears to the colonies.

6370. A drunken husband, do you say?—Generally drunken.

6371. Has this law of divorce for desertion in Scotland brought to light any cases of hardship?—I have no experience of any such. I always feel that I never do a more useful day's work than when I divorce half a dozen people for desertion; that is to say, give half a dozen deserted wives the right to enter into legal unions, which they generally have in prospect before they bring the action; because sometimes the desertion may have continued over 10 or 15 years before the action is raised, and there is generally some motive, the motive being that they wish to enter into a legal and respectable union.

6372. But you point out that there are some cases, even in your law, which require some further remedy?—Yes; I think, for instance, we ought to have a divorce where a man has been convicted of unnatural offences, or lewd practices, or attempts to ravish, or anything of that kind. Of course, these are all cognate with adultery and seem to me to be of a very much worse description. Then I think also that where a person has been convicted of crime——

6373. I am coming to those shortly, but I am on that part of your proof which commences with the words: "With reference to the law of desertion." I will come to the other points?—Yes; well, I have already indicated the hardship I think we have all felt on that subject as to a woman who has been brutally ill-used having to depose on oath that all the time her husband has been in desertion she has been anxious to have him back, and I think that should be dispensed with.

6374. That is a case apparently referred to by Lord Young, of Watson *v.* Watson?—Yes.

6375. Perhaps you would quote the passage which you refer to there which deals with it?—He put it very neatly. He said, "If pre-admonition is a legal requisite, "then we can tell the Pursuer your husband has "deserted you for 16 years; and if you are very much "cast down about it and want him to return we will "grant you divorce; but if you are not sorry, we will "not." Put into plain language, he said this is nonsence; and I agree with him.

6376. The point is that you must be satisfied of a willingness to return all the time?—Yes.

6377. Whereas if he has deserted her, having beaten her and so on, and she does not want him back she would not get a decree?—In one of those cases, it was a case where a wife had lapsed into habitual intemperance and after many years, in which the husband had borne with her, she sold all the furniture while he was away and disappeared. Well, the husband, not unnaturally, made no great efforts to find this woman, and was unable to say that he did not feel it other than a relief when she went, and so he was refused his remedy of divorce. So it comes to this, the worse the deserting spouse is the less chance have you of getting a remedy.

6378. Then even the Scottish law does not seem to be quite satisfactory in matters of that kind?—No, I think it requires amendment on that point.

6379. Now there is another point you make before we pass to the other matters. It is referred to in the paragraph beginning: "Other cases of hardship"?—Yes; well, that really bears upon the other point. At present the years in which a man is confined in one of His Majesty's prisons do not count as years of desertion. Therefore, if a man deserts for three years and is then put into jail for five, his wife cannot get a decree of divorce against him because there has not been four years of continued and obstinate desertion, the fifth having been spent in jail very much against his own will and preventing him returning to his wife.

6380. That would apply if he was convicted on the 364th day of the last year?—Yes, it would, and I think that is unsatisfactory, and when a man has got himself through his own fault into such a condition that he cannot adhere to his wife, that should be counted as desertion.

6381. Is there a similar difficulty if he has deserted her and the years are running and then during that time he becomes insane?—Yes, the same difficulty arises.

6382. The four years could not go on running during the insanity?—No.

6383. Because there is no mental intention to keep apart?—Yes.

6384. You think that should be remedied?—Yes.

6385. Then there is another point where you refer to the case of Hunter *v.* Hunter?—Yes, that was where a husband had deserted his wife many years, and she, believing him dead, married again, and it was held on his afterwards turning up that she could not obtain a divorce on the ground that at her marriage he would have been justified in refusing to adhere to her. Now, it has always been recognised in Scotland that recrimination does apply in cases of divorce for desertion, although not in cases of divorce for adultery. That is to say, that a woman who pursues an action of divorce for desertion cannot succeed if during any part of the time she has been immoral. Now what I suggest is that after four years there should be a vested right to obtain a divorce, and that any lapse from morality after these four years should be of no moment. I had a very striking case of that kind the other day that came under my notice, of a man who

had been deserted by his wife, who had ultimately found her way into a lunatic asylum. He wished to legalise a union that he had in the meantime entered into with another woman and by whom he had a large family. When the action was brought, as it was alleged she was insane, I appointed a *curator ad litem* to her, who ascertained that this man had children by this other woman, and that, according to our law, was a complete defence, and the action had to be abandoned. Now, I say if, in consequence of his wife's desertion, he had lapsed from morality after the period of four years, it should be no bar to his obtaining his remedy for her delinquency, because it might well be said that his own immorality had been the natural result of her failure to perform the conjugal duties.

6386. Will not that equally apply if he is unfaithful during the four years he had been in fact left?—Yes, only I am rather in favour of retaining that. I think there would be a danger ——.

6387. Take a case like this, where a woman is deserted, her husband going to America?—Yes.

6388. She has to wait four years?—Well, there is a great danger there.

6389. Supposing she did, at the very last part of the four years, succumb to a moment of temptation through starvation. That is not at all an uncommon class of case?—No.

6390. That would be a bar, would it?—Yes, because he would be legally entitled to remain away from her because of her infidelity.

6391. Do you think it right to retain that?—I think there must be a difficulty in providing for all cases of hardship, for this reason: supposing the husband six months after he had apparently deserted——

6392. But would not that rather lead to a judicial discretion if, for instance, the absence had been really the cause of her fall perhaps?—Well, I thought that probably the public opinion, at all events in Scotland, would be satisfied if there was a statutory right after four years, and there would certainly be far less likelihood of collusion if it was required as a statutory requisite that the injured spouse should remain chaste during that period of four years.

6393. However, in some of these respects you point out there ought to be, even in Scotland, certain changes?—Yes. I may say we have had no change since 1573 upon the Statute.

6394. Well, in 1573 they could not get off to America for it?—No.

6395. Now, I want to ask you about one or two other things that I think come in naturally here. The law in Scotland does not allow any divorce at present for cases of gross cruelty—simpliciter?—No, it only allows separation.

6396. Have you formed any views about that when cruelty of the husband is such as to make life impossible and has been, we will say, continuous?—Well, I think that is a very difficult question, and not one really that bulks very large in actual practice, because, if a husband is a beast to his wife, it is very likely he is an immoral person, and she may get her remedy in that way. If her only complaint against him is his cruelty, well, she can punish him for that by obtaining a separation, but, as you see from the statistics in the Court of Session, of separation and aliment cases, they are comparatively rarely resorted to, though they have become more numerous, no doubt, since the extension of jurisdiction in the sheriff courts. I do not think it is necessary or desirable to have a remedy of divorce for mere cruelty, although if it is conjoint with habitual intemperance I think there might be another answer.

6397. In that case you mean it might be a case for freedom?—In that case I think there should be a right of divorce when there is habitual intemperance and cruelty, or in the case of the wife's habitual intemperance only. We made an advance upon that quite recently, because by section 7, subsection 3, of the Licensing (Scotland) Act, 1903, habitual drunkenness was made a ground for separation.

6398. And you think that might be made a ground for divorce?—It might also be made a ground for divorce, though I do not think it is of such great practical consequence. Apparently in Scotland intemperance is regarded amongst the lower classes as more or less a venial offence, and you do not find many women complaining of their husbands because of mere intemperance.

6399. But supposing their intemperance leads to gross acts of cruelty?—Ah, that is a different matter. Since that Act of 1903 was passed I think there has been only one case, and that happened to be before me, where a woman asked for separation on the ground of her husband's habitual intemperance. Now, I am aware there are very many husbands in Scotland who are habitually intemperate, but their wives seem to put up with it.

6400. The question, then, of cruelty with intemperance is one that you think is deserving of consideration?—I think it deserves consideration.

6401. One other point; with regard to crime involving penal servitude for some years, or a number of convictions?—I should say five years would be sufficient, indeed any sentence of penal servitude, because it is in the option, after all, of the other spouse.

6402. You would think that a good ground of divorce?—I think it should be.

6403. Perhaps you would tell us, as you have thought of this so much, what are the grounds on which you justify that?—Well, I think it is intolerable that a law-abiding person should be compelled to cohabit with a serious criminal. If he or she chooses to do so, of course there is no objection; but I urge it on public grounds, because it is almost certain that the wife or husband of a professional criminal would be dragged into the same life that the other spouse follows, and I think it is absolutely revolting that the law should compel a man or woman to cohabit with a returned convict. Of course if the offence is one like embezzlement, it may not be an obvious ground for divorce, but then I think that may be safely left to the party. Probably the wife of a commercial traveller who has embezzled money and has got a sentence of penal servitude would never dream of divorcing him and would sympathise with him. But if her opinion of her husband was such that she desired to be free from him, I think she ought to have the option.

6404. Would you gather from your long experience as a judge that it is likely that that would be abused if left to the discretion of the person who had the power to complain?—I do not think it would be abused really, and I think in every system of jurisprudence that recognises divorce that that is a ground of divorce except in England and in some of the Colonies of England that have adopted English law.

6405. Yes, we have had the foreign codes?—Yes.

6406. Now, turning from that class of case to the case of insanity. I do not know whether you saw the figures that were put before us the other day by one of the witnesses as to the number of people who are confined for insanity and the possible number of those who are married. We can have that more accurately later on, but for the present purposes there appears to be a very large number?—Yes.

6407. Have you considered that class of case?—I have considered the general point. I have not had the figures before me and my opinion is that where insanity has subsisted, we will say, for three or four years, and is certified to be in all probability incurable, that it should be a ground for divorce. I think both from the point of view of the individual who is tied to the insane spouse and in the public interest, it is very desirable that this remedy should be given.

6408. Will you tell us how you bring in the public interest?—Because I think to compel a person to cohabit with a person who has been long insane, although he or she has recovered, is against the public interest, in so far that there may be children of the union, who will, in all probability, have the taint of insanity.

6409. That means then that if they do recover, the union is not desirable and if they do not recover it becomes impossible?—Yes.

6410. Have you had a case which you have referred to in your proof shortly before you dealt with this point?—Yes, I had an interesting case in which a

woman, who had married an officer in the Army, alleged that the marriage had never been consummated, and that her husband was now in a lunatic asylum as a permanent lunatic, and she brought an action to have the marriage declared null on the ground of his impotency. Well, I found on a remit to a medical man that there was nothing to corroborate her statement, and she withdrew the action. The next phase of the case was that her husband, who had sufficient mind to give instructions, raised an action against her for divorce on the ground of adultery; she had taken the law into her own hands and had gone off with a gentleman who was willing to support her. The husband had been sufficiently right-minded to raise the action of divorce, against her for adultery; he obtained his decree, the co-defender paying his costs, and the next day I noticed from the papers that the pair had got married. It just shows that if you do not give the remedy of divorce for insanity you drive people into immorality, because they will be free of the tie; and if the only way in which they can become free of it is to commit adultery, then they do that and take their chance of the other spouse bringing an action against them.

6411. Now there are one or two points which you mention in your proof with regard to the effects of a decree in Scotland. Perhaps you would tell us what you have to communicate with regard to that?—Might I just say, before we pass from insanity, that it is rather interesting to notice that insanity was a ground of divorce according to the law of the early Christian Church, because it was expressly introduced by Leo the Wise. It is not a novelty at all.

6412. Would you give us the authority for that?—The authority for that I came across incidentally in Lord Fraser's book on Husband and Wife; you will find it on page 1133.

6413. Would you give us the quotation; it is useful to have it on the note?—He says, "In the "year 556 appeared this Novel of Justice, restoring "the ancient law, and bearing as the reason for its "enactment that it was intended to annihilate the "remedy of poison, so often resorted to. The law "thus continued to allow divorce by mutual consent, "and also at the instance of either party, upon his or "her establishing any of the other grounds contained "in the preceding constitutions, down to the time of "Leo the Wise, in the ninth century, who added to "the causes of divorce by the wife the insanity of the "husband." And he quotes the passage in the Novel of Leo which established insanity as a ground for divorce.

6414. (*Sir Lewis Dibdin.*) That was the church in the east?—Oh, that may be.

6415. It was not the Latin Church?—Probably not; but at all events it is an early recognition of divorce on the ground of insanity. But of course the church in the east was a Christian Church.

6416. Oh, very much so; but it had quite a different standard on this subject?—Yes, I admit that.

(*Chairman.*) We have had a Greek law put in, but I am under the impression it is a ground of divorce in the Greek Church now.

(*Sir Lewis Dibdin.*) Oh, yes.

6417. (*Chairman.*) Then you have a few points in the latter part of your proof which you say bear on the effects of decrees of divorce in Scotland?—Yes, that is the point as to its being illegal for paramours to marry. That was undoubtedly enacted by the Statute of 1600, chapter 69, but subject to this limitation, that it must appear from the decree of the judge that the parties had committed adultery together.

6418. The named parties?—The names must be included in the decree; at all events the Statute was so interpreted by judicial decision, and therefore it was held not to apply to a decree in the English court when the name of the paramour was conjoined, but only to apply in Scotland; but in fact the Statute has been an absolute dead letter, and I notice Lord Chancellor Eldon, in a case in the House of Lords, referred to the practice then prevailing—that is, in 1824—by which the Act was systematically evaded by the name of the co-delinquent not being mentioned in the proceedings, so that the judge could not insert any name in the decree. Well, that was done obviously because public feeling and public opinion were very much against the notion of constituting any bar against the remarriage of any person divorced for adultery, and of course if the law is not in accordance with public opinion it is just systematically evaded if it is possible to evade it, and that has been done in Scotland throughout these three centuries. But it is still the law that the judge may make the marriage of the paramours illegal if he chooses to enter the name in the decree. For my part I have never done so and would absolutely refuse to.

6419. Why?—Because I think it is a worse thing in the interests of the public morality that the two people found guilty of adultery should not have a chance of rehabilitating themselves; and I think it is in accordance with one's feelings that if a man has seduced a married woman and the result has been that the husband has divorced her, it is his duty to set her up in life again by marrying her; and that has been so much the opinion of the people in Scotland that they have allowed this Act to remain a dead letter.

6420. You say in one case it was done, I see?—Yes, but it is the only case I know of. It can still be evaded because the only case in which it was done was the case of a Scottish landowner whose conduct had been grossly immoral, and I suppose the judge who granted the decree had been moved by that, because he inserted the name of the paramour in the decree. Well, the gentleman divorced immediately crossed the border, acquired an English domicil—I think he took up his abode in Berwick—as near Scotland as he could, and thereupon married his paramour; and nobody could take any objection to the validity of that marriage.

6421. Then you think that provision should be struck out of the Statute Book?—I think so.

6422. Then another point is about matrimonial rights?—Yes, I have already adverted to these as bearing upon the deterrent effects of an action for divorce, and I think I have explained what the effect is—that divorce acts exactly like death and leads to the right of succession immediately.

6423. Yes, you have already dealt with that; the effect being that if the decree amounts to treating the other party as dead their property rights become treated as if he was so dead?—Yes.

6424. And that is a considerable deterrent, in your view, to acts which would lead to divorce?—Yes. Of course it only acts as a deterrent amongst those who have property.

6425. I see you also notice that there is no provision under which a judge can compel a husband to settle a sum on a guilty wife in a divorce action?—No.

6426. You think that would be desirable?—I think that would be very desirable. If insanity was introduced as a ground of divorce, for instance, I think the pursuer of the action should only obtain the remedy on the footing of making provision for the insane spouse.

6427. I dare say you know we have a provision in England that entitles the court to suspend a decree till a provision is made?—Yes; we have no corresponding provision in Scotland; we have no power to grant aliment or maintenance.

6428. We do it because we think in some cases it is right that the husband should keep her off the streets?—Yes; well, in that respect I think the English law is superior to ours.

6429. Then there is another point you have touched upon, and that is the power of recrimination. That does not exist in Scotland?—No.

6430. Except that you have told us that in cases of desertion the spouse must remain faithful during the four years and possibly longer?—Yes.

6431. In cases of adultery—what do you say about that. In Scotland, we understand, the guilt of the petitioner does not amount to a bar in a suit against the respondent. I should like to know exactly how that stands, and the reason it is considered desirable?—I think on public grounds mainly; grounds of expendiency, and in the public interest; because the

position of spouses where both have committed adultery, and who are yet compelled to live together, is a very unfortunate one in the interests of public morality. They are each in that way practically licensed to commit adultery without any consequences following. I cannot conceive any worse condition of matters than spouses continuing to live together without being amenable to any remedy at the instance of the other, however great the infidelity may be.

6432. You rather think that the present state of the English law, then, leaves the State side of the question out of consideration?—I did not catch that.

6433. The English point of view is that adultery is a bar except in some very exceptional cases?—Yes.

6434. That is because you must come into court with clean hands?—Yes.

6435. Therefore you are treated as a plaintiff as against a defendant?—Yes.

6436. If that is the exclusive way of looking at it, it leaves out of consideration the State point of view?—Yes, and I think in any law of divorce you must consider it from the point of view of the community.

6437. Is there any other authority in Scotland on this point that you were going to refer to?—I can only say that Lord Fraser, writing in 1879, says that while "it was the rule of the Scottish law from early times, "and continued to be so to the end of the 17th cen- "tury, that recrimination, or mutual guilt, was an "absolute bar to divorce, the modern law has wisely "departed from this rule; and although recrimination "may affect the patrimonial consequences flowing from "divorce, yet it will form no bar to the court dis- "solving the marriage." This has grown out of our common law; there is a statute on the subject, and the old common law was changed in deference to feelings of public expediency, and there has been, as far as I know, only one protest since the end of the 17th century by any judge against our law on this head. Lord Fraser mentions Lord Ardmillan, who took the English view and protested vigorously in three cases where he dissented from the other members of the court, but his opinion has not been shared by anybody else, and I should say that the public opinion in Scotland would be very much against adopting the English principle, however plausible the grounds may be on which it is based, as being against public morals.

6438. Some of the consequences you refer to, I dare say, relate to the disposition of property?—Yes.

6439. It would not necessarily follow that a guilty wife suing a guilty husband was going to take a third of that income?—No, that is specially provided for. When they raise cross actions they are both, if they both succeed, counted as *quo ad* each other, and they then both forfeit all right in each other's estate. That is why there are mutual actions, because freedom is as complete when one spouse obtains a decree as if both do.

6440. I should like to ask your view further on this point which is so important. Do you think a change in the direction of the Scotch law would tend to increase immorality?—On the contrary, I should think it would diminish immorality very much for the reason I have indicated.

6441. I can understand it, if you will allow me to put it, diminishing immorality after you had separated these particular people?—Yes.

6442. But the suggestion, I think, has been made that prior to that time, when these people are married and living together, if they both know that it does not matter whether both are guilty, that they might be influenced in a direction in which they would not be so influenced if they knew it was only the innocent person who could obtain relief?—Yes, but I think if both know the other cannot punish him or her for adultery, then you have no obstacle to their indulging their immorality as much as they please.

6443. That is the very point I mean. But I do not quite see why you say this power tends in the direction of morality?—But you see each may begin a new life after the decree of divorce with a husband or wife that is congenial and to whom the erring spouse may be faithful.

6444. Yes, that I quite follow, after the guilt on both sides has occurred, but it may be said, may it not, that, with the law as it stands at present, it is a check on guilt being originally committed if you know your fault will debar you from your remedy?—Yes, but I do not think in an ordinary case, say, a husband remains chaste because he contemplates the possibility of divorcing his wife. I should fancy he never contemplates such a contingency.

6445. Then you mean it would not, in your view, tend to increase immorality before the question of a suit arises?—No; I think for the most part people who are unfaithful are unfaithful through passion.

6446. Independent of legal consideration?—There is no deliberation on their part, nor do they contemplate the Divorce Court at the time.

6447. You mean their action is untrammelled by what would happen afterwards?—Yes, absolutely.

6448. Now, there is a point we have passed, but which I want to ask you something about, and that is the question of publication. I think your practice has been to admit the public and the press at every stage of the proceedings?—Yes.

6449. Are there powers to exclude them?—Yes, we have power to exclude them whenever we think evidence of a disgusting nature is going to be given, but the power is not very often exercised.

6450. Is it exercised in cases of nullity?—Invariably.

6451. And in cases of offensive character, and rape cases?—Yes, and if there would be any objection to the exclusion of reporters from the public point of view, I think it would apply to cases where persons are on their trial for crime.

6452. Of a certain character?—Yes, we have always exercised the right of excluding the public from these cases.

6453. That is an inherent power?—Yes.

6454. What is your view about the desirability of publicity in these divorce cases?—I think, at all events in defended divorce cases, it is highly undesirable that the public or the press should be admitted at all. It is not necessary for the protection of the parties; it only leads to the publication of literature which in any other form might possibly be interdicted as indecent.

6455. Would you extend that to undefended cases?—I do not think it is so necessary in undefended cases, because, as a rule, there are no details spoken to in undefended cases; the witnesses confine themselves to the bare narration of facts, which, as a rule, do not interest the reporter or the public. What the press likes is something dramatic—the details, and they do not report undefended cases at any length; and with regard to divorce for desertion, I think it is well that they should be open to the public. You may say they are drawing-room cases; there is nothing objectionable to anybody hearing the details of a desertion case; and it is rather in favour of preventing the possibility of collusion in such cases; and that is why I say I should limit the exclusion of reports to defended cases where you have somebody charged with the protection of the rights of the defending spouse.

6456. You put that on the ground that it is not good for the country to be reading about these cases?—I think it is very bad, and I think as it is only divorces in high life that are reported in such detail it gives an entirely false impression of the morality of the upper classes.

6457. Do you consider that it is an objection to adopting that course in this class of case, that it takes away some deterrent effect with regard to the commission of the act?—Not the least. I do not think anybody who exposed himself to the consequences of adultery reflects on the possibility of the details being published. One finds in every defended action of adultery the attempt has been to conceal the guilt with a view of avoiding an action for divorce at all, no doubt, but not with a view of preventing the publication of the details of such a case if they ever emerged. The hope of the persons is that they will never be found out.

6458. Would you consider it desirable to permit of the pleadings and the judgment of the court being

published?—I certainly think they should be published and there would be no objection to their being published, because the pleadings are always in as chaste a form as is consistent with the substance of the action.

6459. Would the abolition of this publicity be any advantage in the administration of justice from the point of view of witnesses?—I think it would be from the point of view of witnesses. I know of cases myself where hotel-keepers, boarding-house keepers, and people who keep medical homes, and so on, have been most unwilling to give evidence which was very necessary for the case, just because their establishments were affected by its being published that they were connected with a notorious or scandalous case, and a kind of taint attaches to these unfortunate people, although they may have been entirely ignorant of the guilty relations between the couple that they received into the hotel or home or whatever it was; and because of their unwillingness to have the reputation of their place affected they might refuse to give evidence which is important.

6460. That would apply equally to undefended cases, would it not?—Well, in undefended cases sometimes we are asked not to allow the address or occupation of the witness to be disclosed to the reporters, and we comply with that if there is no good ground to the contrary.

6461. That is because it is an injury to publish them?—Yes. In a defended case you could not prevent that, as all the details would have to come out and the locality would be capable of being recognised because of the details put by the cross-examining counsel.

6462. Now it is suggested that the difficulty you have mentioned about witnesses is got over by subpœnaing them and that then they are compelled to come?—Yes. Well, I say in the first place very often the solicitor does not know who can give him information on the subject until a voluntary statement is made, and such people will take good care not to give a voluntary statement in order to avoid being subpœnaed. It is a very real grievance especially in connection with respectable nursing homes, for instance, or furnished apartments. There is no doubt whatever that people look with suspicion on the keeper of such an establishment who has admitted a pair of paramours though he may have been absolutely ignorant of the relations between the parties.

6463. Have you noticed that grievance to such an extent as to speak of its being a considerable one?—I can speak of it from personal experience, from having been asked on several occasions to withhold the name, or the address at all events, and sometimes the name of the witness from the press. I am speaking there of undefended cases, because in defended cases, of course, it would be impracticable to make such an application.

6464. Then, broadly speaking, you would be against this publicity except so far as the names of the parties and the judgment of the judge is concerned?—Yes, and the pleadings.

6465. The nature of the charge?—Yes.

6466. I think I have taken you entirely through your proof?—Yes.

6467. (*The Archbishop of York.*) I should like to ask you one or two questions. I take it from your evidence that in Scotland marriage is regarded almost exclusively as a contract—a very important contract, but a contract?—Yes, from the legal point of view it is regarded as a contract, but a contract in which the State has an interest to see that it is not terminated contrary to the interests of the community.

6468. Then adultery is regarded as a breach of contract?—Yes.

6469. And desertion is put on the same lines, and in your opinion, at all events, as an even greater breach of contract?—Yes.

6470. You rather implied that was the view also of the religious bodies in Scotland?—I think, undoubtedly. That is shown by the law having remained in force for 350 years, or thereby, without any agitation on the part of the religious bodies to have it changed.

6471. Then we may take it that the religious bodies regard marriage also as a mere contract?—Well, on that I am not competent to speak, I should fancy there was a difference of opinion on that matter, but at all events they regard it as expedient in the interests of the community that this remedy for divorce should be open to an injured spouse.

6472. Then the religious bodies in Scotland, and I gather from what you say, the public opinion also, would base holding adultery to be a ground for divorce upon scripture?—Yes, I think so.

6473. Then it is alleged that desertion can be justified also on the ground of scripture?—I believe there is a passage in Corinthians which is appealed to as justifying divorce for desertion. But I may say my own view as a lawyer with regard to the passage which is familiar from St. Matthew's Gospel is that adultery is merely mentioned as a typical instance of the kind of violation of the conjugal vow which would justify divorce. But, of course, I am not competent to enter into the theological question. Divorce in the time of Christ was a totally different thing from divorce as recognised in Scotland now.

6474. I do not want to pursue that subject with you and you will not suppose I doubt that Scotland is in every way desirous of being scriptural, but I want it from you whether the religious bodies in Scotland have so steadily countenanced desertion as a ground of divorce deliberately because they believe it to be consistent with scripture?—I think so, and the Parliament of 1573 which introduced the remedy consisted, I rather think, of the three estates, one of them being the Church.

6475. You could not give us succinctly the ground on which desertion as well as adultery is alleged to be a scriptural ground for divorce?—No. I believe Lord Fraser does give a reference to the verse in Corinthians which is supposed to justify on scriptural grounds divorce for desertion.

6476. That applies to marriage with unbelievers?—Yes.

6477. I only want your opinion on that?—Yes, I do not say there is any scriptural basis except upon the construction I take of St. Matthew's Gospel that adultery was merely mentioned as the typical case of violation of the conjugal vow, but not the exclusive or only case.

6478. Then you mentioned as an instance of the remarkable fact that Scotland has always regarded desertion as a ground of divorce, the fact that both in Presbyterian and Episcopalian times that was not challenged?—Yes.

6479. But you admit from 1660 to 1690, which is only 30 years, Scotland was only loosely Episcopalian?—As I said, I do not think there was much difference in creed; the creed remained the same, and even their ritual remained much the same.

6480. You would not wish to argue that the Episcopalian Church had expressly given their sanction to desertion being a ground for divorce?—No; but I say since 1690 the Episcopalian Church has always existed in Scotland as a separate body and there never has been, that I know of, by the Episcopalian Church any protest against our law of divorce for desertion, and I know Episcopalians constantly resort to it.

6481. Is there any form of espousal or contract usually observed by the Presbyterian minister in marrying in church?—I think the rule is for marriages to be celebrated by the Episcopalian minister and in a church. Fifty years ago it was very unusual for Presbyterians to be married in church, but now it is the rule.

6482. But is there any form of espousal, or any words, in which the contract of marriage is expressed at these ceremonies?—Well, I do not know that there is any form binding on the Church as a whole, but, for instance, the minister of St. Giles', which is the church I attend, uses a form.

6483. Purely voluntary?—Yes. Well, I suppose it has been approved by the General Assembly. It is part of the Book of Common Order.

6484. But that is of no authority in the Church of Scotland?—I do not suppose it is

6485. You are aware one of the difficulties which occur in this country is because the marriage ceremony, which is at present a state ceremony, does contain in it words in which a contract is expressed, the words that only death can dissolve the union that is entered into?—Yes, but I think that form is very generally used in Scotland too, and that the words "What God has joined let no man put asunder" are constantly used in the marriage service of Presbyterians.

6486. And the Scotch intellect finds no difficulty in both saying that, and dissolving marriage for desertion?—None, because you are not contemplating divorce at the time you are marrying people. In the same way we do not in our marriage contracts provide for what shall happen if either of the spouses should be subsequently divorced. We only take cognisance of the natural grounds of the dissolution of marriage.

6487. Then with regard to your saying that you thought desertion was an even more flagrant violation of the marriage contract than adultery, might it not be argued that adultery goes much more to the root of the matter and has always been considered in legal and ecclesiastical language as the copula—the essence or root of the marriage contract—and therefore adultery is breaking the marriage tie as nothing else can do?—Yes, but I think desertion involves that too, because the duty of married people is to live together, to cohabit and adhere to each other. Well, when one of them goes away that duty is not discharged, and, as I pointed out, I think it may be assumed from common knowledge that in nine cases out of ten an irregular union is entered into. So that that point of view, while it may seem to extend the grounds of divorce, I do not think it really operates except in a very fractional proportion of cases to do so. I know there are cases in the better class where women are divorced for desertion who would never dream of being immoral, and who are divorced because, as the Scotch would say, they cannot abide the husband or stop with him any longer, and will not stop with him. But it is after all a very very small proportion of the cases we have to deal with in practice.

6488. We may take it, I suppose, that the Scotch courts are very strong in insisting on what they call malicious desertion being proved?—Certainly, as the law at present stands, you must not merely have separation, but you must have separation with the intention of not returning.

6489. You have put that very clearly before us, and I only wanted your clear emphasis laid on the fact that the Scotch courts, with long experience in the matter, take immense pains to prove that there is no sort of connivance?—Yes.

6490. And yet with all that you think four years is the very minimum?—I think four years a very good working period, and as it has been found by three centuries of experience to be unobjectionable that it should be retained as a standard. Possibly three years would do, but the reason why I favour four is that it has been sanctioned by centuries of experience.

6491. Also because you think a lesser period might give rise to those dangers of connivance?—I think so; certainly, if you made the period only one year, I think it would be very likely to lead to collusion.

6492. Or shall we say two years?—Or even two.

6493. Then, on the point of jurisdiction in Scotland, we may take it from you that the sheriff courts not only deserve, but enjoy, a very high reputation in Scotland?—Yes.

6494. The sheriff is always—even the sheriff-substitute—an advocate of considerable practice and eminence?—I should not put it as high as that. I should say a sheriff-substitute, in a rural district at all events, is a man who has not succeeded at the Bar, but who has legal attainments of a sufficiently high order.

6495. He is a trained and experienced lawyer?—He is a trained lawyer without much experience.

6496. But still the sheriff courts have——?—I am speaking of the rural districts only. The important ones in Edinburgh and Glasgow are presided over by men of experience and high legal knowledge.

6497. And does not a great deal of very important litigation pass through the sheriff courts?—A great deal, but in such cases there is always a right of appeal either to the sheriff or to the Court of Session, or to the sheriff alone in smaller cases. That would not be so in undefended actions of divorce. There it is important that the judge who tries the case should have a very intimate knowledge of what constitutes jurisdiction, for instance, so that he may not give a decree against a person over whom the court has no jurisdiction; and questions of domicile are always questions of difficulty and we have no jurisdiction except over domiciled Scotsmen—men who are Scotsmen at the time the action is brought.

6498. You are going beyond what I am asking. Assuming the sheriff courts enjoy a good reputation and have a very high class of litigation submitted to them, yet there has been no desire in Scotland to transfer the jurisdiction of divorce from the High Court to them?—No, I have never heard of anybody being in favour of that.

6499. In spite of their reputation and ability?—In spite of that.

6500. With regard to costs you made the remark that in many cases the witnesses in a divorce case come from quite other regions than the domicil of the pursuer or defender?—Yes, that is true. For instance, the parties may be resident in the Highlands and adultery may have been committed in Edinburgh, and therefore the witnesses may be readily available.

6501. You would say the expense of getting from Wick to Edinburgh would be much greater, so far as you know, than the expense of getting from Cornwall to London?—Oh, I dare say, but speaking generally, England is a much larger country than Scotland, and the distances you travel are greater.

6502. Is it not also true that the railway facilities are greater?—I think that is so with regard to the Highlands, but not with regard to the Lowlands of Scotland.

6503. And not even in the Highlands have you had suggestions for this jurisdiction to go to the local courts?—No.

6504. And you say that is because of the extremely interesting system of the poor's roll for litigants?—Yes.

6505. Is there any hesitation on the part of the self-respecting class, the working poor, to take advantage of the poor's roll?—I think to this extent, that if a man can provide 10*l.*, or 15*l.*, or 20*l.*, enough to satisfy his solicitor, he will do that rather than make an application to be put upon the poor's roll.

6506. I understand that, but a man is not felt to be pauperising himself because he sues in what we call *in formâ pauperis*?—No. Indeed one knows of people in the better class who have to go on the poor's roll with the view of conducting an appeal to the House of Lords from a Court of Session judgment when they are pauperised by the judgment if it is enforced.

6507. And you would still think there is some value in the poor litigants having some expense to pay?—Yes, I do not think it should be made absolutely too easy, and I think if he has to pay down 5*l.* or so which even the veriest pauper can do if he has a little time in which to save it, that it is quite right he should meet that.

6508. One last question about your statistics. I suppose it would be true to say that a large proportion of the upper classes who have interests or property in Scotland and who get into matrimonial difficulties appear in the English courts?—I should say a very small proportion, but the Chairman would probably know more about that than I do.

6509. I think the English courts are credited with a number of persons——

(*Chairman.*) My experience was, if I may state it, that the moment I heard the sound of the Scotch or the Irish tone at once to inquire as to domicil.

(*The Archbishop of York.*) But I regret to say that those who are likely in the upper classes to get into matrimonial difficulties will not have that delightful sound.

(*Chairman.*) No, I think we may say we have not had any questions between Scotland and England about domicil for a very long time.

(*Witness.*) I should like to say that the domicil is what determines the jurisdiction, and a man cannot have two domicils.

Adjourned for a short time.

6510. (*Judge Tindal Atkinson.*) Lord Salvesen, there are five judges, I understand, taking divorce proceedings?—Yes.

6511. Do you find a difficulty arising out of the uniformity of treatment in divorce cases because five judges deal with them?—I do not think so. There are, of course, individual peculiarities, but the procedure is regulated and the grounds of action are formulated by the Courts of Appeal whose judgment we implicitly follow.

6512. Divorce cases are almost always questions of fact?—Always.

6513. Some judges may look at the evidence from a different point of view to others?—Yes. I think generally speaking it is a question of fact. Of course questions of law do arise in actions of divorce for desertion as to the inference you may draw from certain facts.

6514. His Grace the Archbishop of York asked you some questions with regard to the sheriff and the deputy sheriff. The deputy sheriff is the Judge of First Instance, is he not?—I would call him the resident sheriff; there is a confusion there. The sheriff depute is really the sheriff principal or in other words constitutes an appeal court. The proper term for the resident or local judge is a sheriff substitute.

6515. And the sheriff acts in the capacity of an appellate from the sheriff substitute?—Yes.

6516. So that all the business of the court in the first instance goes to the sheriff substitute?—Yes, that is so, with certain limitations which it is not necessary to consider here.

6517. Owing to the questions the Archbishop put to you I think I must ask you what is the smallest salary that a sheriff substitute gets?—I think the smallest is 500*l.* or 550*l.*

6518. And what is the largest?—It runs up to 1,400*l.* a year.

6519. Are they prohibited from practice?—Absolutely.

6520. Assuming for a moment that there was no access whatever to the High Court for the poorer classes of the community in Scotland, would it be better to go to the sheriff substitute than have no remedy at all?—Oh, certainly. I have no hesitation in saying that.

6521. Then you have not formed any opinion as to whether what you call the system of the poor's roll could be applied to England?—Well I see no difficulty in applying it to England because in England the solicitors are subject to the jurisdiction of the High Court just as they are in Scotland and control can be exercised over them. They are in short officers of the court.

6522. It would require a great number of advocates and solicitors in England?—Yes, in proportion to the greater extent of business; but we have agents for the poor in every county town and in fact in every town where a court sits.

6523. What are the class of persons from whom the people are drawn who go upon the poor's roll. Are they purely agricultural labourers?—Oh, no, the labouring classes generally, and the wives of the labouring classes, and of artisans, and people in superior positions. I mean a deserted wife, or a wife living in separation from her husband would be entitled to go upon the poor's roll when perhaps her husband might not be admitted to the privilege.

6524. Then there is a class of population above those who cannot get upon the poor's roll?—Yes.

6525. And they have to come to the High Court as best they can?—Yes.

6526. Now in 1907 some jurisdiction was conferred upon the sheriff substitute?—Yes.

6527. To the extent of getting judicial separations and alimony?—Yes, I think they always had the right to decree aliment—not of a permanent nature, but temporary.

6528. When that Bill was brought in was there any attempt made to give the sheriffs jurisdiction in divorce?—No. Nobody suggested it. The framers of the measure which took shape in 1907 were people who were connected with the sheriff courts in Scotland and who desired that the jurisdiction of the sheriff should be extended as much as they thought they could in reason demand, and they never suggested that jurisdiction in divorce cases should be transferred to the sheriff.

6529. May we consider it the beginning of the end. If you grant the sheriff substitute power to grant judicial separations do not you think that divorce may follow?—I personally do not view it with any apprehension. All I say is it is unnecessary according to the existing circumstances in Scotland, and that I think there are reasons why it being unnecessary to transfer the jurisdiction to the sheriffs, it is better that it is retained where it is.

6530. Certainly. It is far better the parties should have the right of going to a High Court judge than to a deputy?—Yes.

6531. It is entirely a question of necessity?—Yes, and such necessity does not seem to me to exist in Scotland. Whether it may exist in England I cannot pronounce any opinion. There is, of course, a larger expense incurred in bringing witnesses from a remote part in England than from the parts of Scotland which contribute the majority of the divorce cases.

6532. Do you have juries in divorce cases in Scotland?—No, but we have a provision under which it is competent for the parties to apply for jury trial. I think that is as far back as 1828 but in no case has anybody taken advantage of that provision.

6533. (*Chairman.*) Is it compulsory on the judge?—It was optional.

6534. On the judge?—No, it was optional for the parties to move the judge.

6535. But if they move him has be a discretion or must he grant it?—I think my recollection is that only on one or two occasions has a party applied for a jury and that it was then refused. I have the passage here in Fraser. The provision is in the Act of 11th George IV. and 1st William IV., chapter 69. It says that divorce "causes shall not be appropriate to trial "by jury; but it shall be competent to either division "of the Court of Session, or to a Lord Ordinary after "advising with the division of the court to which he "belongs, to direct that any such cause, or any issue "or issues of facts connected therewith, be tried by "jury." And Lord Fraser remarks: "No case of this "kind has ever been sent to a jury," and then he goes on to say: "Lord Chancellor Campbell expressed himself "strongly in favour of cases of divorce for adultery "being so tried; but this suggestion is not in accord-"ance either with popular or professional opinion in "Scotland."

6536. Then is your opinion that it is better not to have a jury in divorce cases?—I am very strongly of that opinion.

6537. (*Mr. Spender.*) Might I ask a few questions with regard to your views on the exclusion of reporters. I see you say in one place that you would not have either the public or the press admitted?—Yes.

6538. You also contemplate reporters being present to take the summing up of the judge?—Yes, certainly. I mean I see no difficulty in that. For instance, if you take the class of criminal case in which reporters and the public have always been excluded, what happens is that after the prisoner has pleaded, the court is cleared, and after the jury have retired, the court is again open to the public so that they hear the verdict of the jury, and the sentence and observations, if any, pronounced by the judge, and can, therefore, report the nature of the complaint made at the instance of the Crown against the prisoner, and also the result of the trial, but they are excluded from hearing the evidence.

6539. I was thinking of a slightly different procedure from that. I was thinking of the press being admitted, possibly to hear the summing up of the

judge?—Well, there is no summing up in divorce cases, because we do not try them by jury, and therefore what happens is that after the proof is concluded, you have the speeches of counsel, and if the case is a difficult one, the court takes time to consider it, and thereafter puts out the case for judgment.

6540. Yes, I see that point with regard to Scotland. Then you say the pleadings sufficiently disclose the nature of the charges made. With pleadings would you admit the opening statement by counsel?—No, we have no opening statement by counsel, but our pleadings are what is called a record which contains the statement of facts from the point of view of the plaintiff, or pursuer, and the answer to these statements made by the defender.

6541. And those you would have open to the press?—These, I think, should be open to the press as at present.

6542. Might I ask you if it has occurred to you that there are occasions on which publicity might be very important to one of the parties to the suit. It has been put to us by more than one witness. I think Mr. Priestley gave us his opinion that there were cases in which it might be a matter of justice to the co-respondent or the respondent to have the case tried in open court in order that his or her character might be cleared, and the only way of clearing it decisively might be an open hearing?—It seems to me that is sufficiently guarded by the judgment of the court if it is in favour of the co-respondent.

6543. You do not think there might be certain cases in which the public itself might desire to form its own opinion from the evidence?—I think these cases must be extremely rare—I mean legitimate cases of that description must be extremely rare—because, after all the section of the public that can be admitted to a court of justice is the merest fraction. Apart from the presence of reporters, the details heard by the few who might find accommodation in a court would never travel far.

6544. I am not thinking of that. I am thinking of the possibility in these cases of admitting reporters where either of the parties move for it. Supposing a party to a divorce suit thought publicity was very important to clear his or her character, would you allow application to the judge for it to be tried openly?—If I could conceive such a case, I think it would be one in which it was worthy of consideration whether or not the discretion should be in the court to grant it. But, as far as my experience goes, I think both parties to a divorce case would be generally very glad that the details of their domestic life and of their delinquencies, should not be published at large, even though the result is made known, especially as I think it may act not as a deterrent to immorality but as deterring people from availing themselves of the remedy which the law provides—the fact that they can only do so at the expense of having their whole domestic history made public.

6545. I am only thinking of these exceptional cases in which either the parties or the judge trying the action might think publicity desirable. In those cases you would not object to a discretion being given to the judge to allow publicity?—Certainly not. If any sufficient cause was shown why the ordinary rule for which I contend should be departed from, I think it should be in the discretion of the judge to relax it.

6546. Then, under your suggestion, I take it that the judgment given by the judge might assume a greater importance as being the one published part of the case; the judge might expound, or emphasise, or dwell on certain points if he considered it to be in the public interests to do so?—Yes.

6547. And you would rely on the statement of the judge for the report to be, in a sense, a deterrent. You think it would be sufficient?—I think quite sufficient, and from the point of view of the parties, of course any error on the part of the judge can be corrected by an appeal to either division of the court, and ultimately to the House of Lords. According to our system, which is one of trial before the judge, the decision is appealable to the House of Lords.

6548. A previous witness told us that the practice of publishing reports of divorce cases lent itself specially to blackmail. Is that within your experience, Lord Salvesen?—I cannot say I have any experience of that at all.

6549. Might I just ask you one question about another part of your evidence with regard to these statistics. They appear to show that divorces are somewhat more numerous in Scotland than in England and Wales. That is so, is it not?—I should think it is exceedingly likely due to the fact that nine-tenths of the parties who obtain divorces in Scotland could not incur the expense of obtaining divorces in England. I should expect that in those circumstances.

6550. I think the figures are that the population of Scotland is about one-eighth of the population of England and Wales and divorces are about one-third of the number in England and Wales?—Yes, and I attribute that entirely in the first place to our poor litigants system, and secondly, to the cheapness generally of our courts as compared with that in England.

6551. (*Sir Lewis Dibdin.*) And to the granting of divorce for desertion?—Yes, and to the granting of divorce for desertion.

6552. (*Mr. Spender.*) And to the equality between the sexes in these matters?—Exactly. I should protest against the suggestion that it showed there is any more immorality in Scotland than in England. My own view is if the matter were investigated it would be the other way.

6553. That is what I was trying to get at. It is your view that it does not point to any increase of immorality in Scotland over that in England?—No, I think it is accounted for on the other grounds.

6554. And it is your view that it is just that all the grounds for divorce should be equal between men and women?—Yes.

6555. (*Mr. Brierley.*) Is the Act of 1907 which gives the sheriff court jurisdiction to grant separation and aliment, a provision which corresponds with the English Act giving justices of the peace power to grant separations and maintenance for cruelty and desertion?—I think the remedy is a different one. The effect of a Scotch decree of separation and aliment is that it can only be rendered inoperative by the consent of both parties, and so long as the holder of the decree insists on his or her legal rights the separation order continues.

6556. But is there any inferior court in Scotland which has the right to grant aliment to a wife who has been deserted by her husband or has been treated cruelly by him?—None. We have justices of the peace in Scotland, but their jurisdiction is a diminishing and almost a vanishing quantity.

6557. Could you give me any idea of the number of cases since 1907 that have come before the sheriff courts?—I have statistics of that which have been obtained from some of the sheriff courts, not a complete list of them.

6558. You are aware that there are a very large number of these separation orders made by magistrates in England and I was only wanting to know what the result of granting similar powers to the sheriff court has been in Scotland?—It has been apparently to enormously increase the applications for separation and aliment.

6559. (*Chairman.*) Have you got the figures?—I have the statistics here. I see in Glasgow alone, for instance, 310 decrees of separation and aliment were pronounced from the 28th of August 1907 to the 1st of January 1909, that is a year and a few months, as compared with an average of 24 or 25 for the whole of Scotland before. The reason of that is obvious. No woman who was not the wife of a man of property could ever bring her action for separation and aliment in the Court of Session to any purpose or to any advantage, because if you could conceive a person in the working class bringing an action, on the poor's roll we will say, for separation and aliment, the result would be to pauperise the husband by the expenses incurred so as to make him unable to contribute to her support. Therefore the Court of Session as a tribunal

for trying cases of separation and aliment was really not open to the humbler classes. Now a remedy can be cheaply obtained in the locality and it is taken advantage of apparently by a very large number of ill-used females of the lower classes to obtain protection from drunken or cruel husbands.

6560. (*Mr. Brierley.*) Have you formed any opinion as to whether that has been conducive to immorality on the part of the persons so separated?—I should say it is still too short a time to judge, but I should fancy one would find that that number will not be maintained, that it represents those who have had grievances of many years standing and who have taken advantage in the first year of the Act's operation of the separation clauses.

6561. You have not really had time to see how the Act works in what we may call its normal condition?—No, I do not think so.

6562. You did say it is necessary for a woman who desires divorce on the ground of desertion to prove that she had not received maintenance from her husband?—Oh, yes, if she had been in receipt of maintenance from her husband, then he is held not to be a deserter.

6563. If she obtained aliment in the sheriff court though a separation was not granted would she be debarred from bringing a divorce on the ground of desertion?—Not if the aliment is never paid.

6564. But if she even received a week's aliment?—Then it would mean that the period of desertion would commence from the time the husband absolutely neglected his conjugal duties.

6565. Then it is necessary that she should live for four years without any support at all from her husband before she can obtain a decree of divorce for desertion?—I do not say that as a matter of law, because there may be cases where she has a pound or two remitted to her from her husband, and yet one would hold he was in desertion.

6566. Substantially she has to live then for four years without any support from her husband?—That is the general case. You may take it that the general case is that the husband deserts and entirely neglects the duty of supporting his wife and children.

6567. That is a necessary element?—It is not an absolutely necessary element because I may——

6568. Does it not sometimes work hardly on a poor woman if she cannot support herself and her children without assistance from her husband?—Yes, but then the ordinary typical case is one where the husband never gives her the opportunity but it does not operate as far as I know as a bar if he is absolutely refusing to live with her. It is merely an element in considering whether the separation is of consent. I mean if you had a case where the woman was being regularly maintained by her husband—who was abroad, and, therefore, unable to adhere to her—you would naturally expect that the separation was either on good grounds as far as he was concerned—that he required to be abroad to earn his living—or that he is abroad with her consent and you would have to enquire before granting a decree.

6569. You mean it is only evidence in the case that she has consented to the desertion?—Yes.

6570. Just one other question with regard to the poor's agent. Do I understand you in every sheriff's district there is a poor's agent?—Yes.

6571. That is well known to the people, is it?—Oh, yes, and they can be directed by almost anybody where to go to apply to the poor's agent.

6572. Everybody knows that they can apply in case of need to a poor's agent who will look into their case for them?—Yes, as far as I know the body of Procurators in every sheriff court district meets annually and appoints one or two of its number to act as poor's agents, and very often when there are not many agents it is a man of considerable standing who is appointed and he must undertake the duty free of charge.

(*Judge Tindal Atkinson.*) Might I ask one question more?

(*Chairman.*) Yes.

6573. (*Judge Tindal Atkinson.*) Has this sheriff substitute any staff of officers connected with his court?—He has all the necessary staff. He has a sheriff clerk to look after his processes and a deputy sheriff clerk; he has, of course, shorthand writers connected with the court.

6574. Has he registrars who overlook matters in the office?—Yes; the officer that approximates most to that office is the sheriff clerk.

6575. (*Sir Lewis Dibdin.*) I think you told Mr. Brierley that under the recent legislation the number of separation orders that were made very much increased the total number of separations in Scotland?—Yes.

6576. I did not catch the figures, but it was very large?—It is very large. I saw it with some surprise myself.

6577. Would you tell us what the number is?—Well, I gave you only an instance. The average number of separations and aliment cases in the Court of Sessions was lately given in the statistics as at something like 20 to 30 per annum, whereas in Glasgow alone in 18 months there have been 310 cases.

6578. And I suppose there has been a corresponding increase in other parts of Scotland?—Yes, according to the population.

6579. And those orders are granted for adultery and cruelty on the part of the husband, are they not?—Yes.

6580. Your view is, I think, that the facilities for divorce in the Scotch courts are adequate?—Yes.

6581. Therefore I suppose it would not be accurate, in your view, to say that this very large number of separation orders are cases which, if the parties could afford it, would have been brought in the Divorce Court?—No.

6582. They are not, in other words, potential divorces at all?—I think not. I think it just shows there were a large number of women who were habitually ill-used by their husbands, and who could not get protection except at an expense out of all proportion to their means, and that when facilities were provided for obtaining the protection in the local courts they at once availed themselves of these.

6583. And if I caught what you said, the large figures were probably in some measure due to, as it were, arrears of cases, and the moment the Act was passed people took advantage of the new legislation and came forward as they might have done years before if the Act had existed?—Yes.

6584. I suppose there is no doubt the increase in separations will continue to be very considerable?—I should think so.

6585. I do not mean in growth, but the increase over what it was before the Act?—Yes, that is true; but I do not think necessarily an increase of drunkenness or cruelty or immorality, but an increase in those who can obtain the remedy.

6586. It is not your view at all that these are cases which are really cases that might have been brought in the Divorce Court?—No. I think probably none of them would. Of course I cannot state the grounds, because that is not given in my statistics, but I should think it very unlikely that any material percentage of these are brought upon charges of adultery, although that is competent.

6587. Or cases in which, though adultery is not disclosed, it is present?—There may be such, but you cannot tell. I should think an ordinary typical case is the case of a drunken husband who insists on living with a well-doing wife who is earning her own livelihood, and sponging on her earnings, and she now takes this easy course of getting protection against that.

6588. Do you think in the ordinary case, take the case you have just described as a normal case, that when a woman has got a separation order it would probably lead to an irregular connection on her part with some other man?—Not more than probably would happen in the class under existing conditions without a separation order. I should fancy these cases are cases of the people in the lowest class, I mean the very humble wage-earning class, where a woman may be making 10*s.* a week as a charwoman, and objects to sharing that 10*s.* a week with her ne'er-do-weel of a husband.

6589. And the same thing would apply to our magistrates' orders under our jurisdiction?—I should think so.

6590. I want your view a little more clearly as to how the divorce jurisdiction came into Scotland. We start with before the Reformation when there was no divorce in Scotland, of course?—But very many cases of separation and aliment.

6591. Yes, but I am only talking of divorce *a vinculo*?—Yes.

6592. Like all the other Christian countries in the west, divorce was not allowed?—No.

6593. I mean divorce in the strict sense?—No.

6594. You have told us that that was on account of the views taken by the church as to marriage being a sacrament?—Yes.

6595. And the indissolubility of marriage, I suppose, was a result of that view of its sacramental nature?—I should fancy so.

6596. Then as you have told us I think at the Reformation that idea of marriage being a sacrament was in terms repudiated?—Yes.

6597. And the divorce for adultery became part of the common law in Scotland, I think you told us?—Yes.

6598. Was that because people were thrown back on what they considered the express words of Holy Scriptures, and that the direction you have mentioned in the Gospel about divorce for adultery was, as it were, incorporated into the common law?—I think so, and because I should fancy the state of matters before the Reformation had resulted in great abuse, and that the public conscience was more or less shocked at the condition of affairs connected with the marriage state.

6599. Quite, but, Lord Salvesen, you will appreciate my difficulty as a lawyer dealing with the parallel condition of things in England as to how the change in the law came. We have to account for that, have we not? Granted people knew the necessity of it, you would have expected legislation, would you not?—Yes, but not in those times. You see before the Reformation adultery was recognised as a violation of the conjugal vow, and they gave a remedy in the form of an order for separation and aliment. Well it was very easy to pass from that, having in view the expediency from the public point of view to a divorce for adultery whenever you get rid of the ecclesiastical notion of marriage being indissoluble.

6600. Now, with the traditions in which the people had been trained, lawyers, statesman, and everybody, was it easy to have that transmission?—Well, it seems so. In Scotland the reaction was very strong.

6601. But that was a very sharp line of distinction up to that date?—Yes.

6602. I suggest the Bible was regarded as part of the common law of the country, and that they really went upon what they regarded, rightly or wrongly, as a scriptural direction?—I can scarcely think it originated in that way. I think it originated in notions of public expediency. I have not seen any passage either in the statutes or in the institutional writers which indicates that we adopted the New Testament as part of the common law of Scotland.

6603. I will take your answer, Lord Salvesen, but I ask you that because my reading of the Reformation writers is that they did put it very strongly?—Are you referring to the theological writers?

6604. Yes?—Well, that may be so, but I do not think that applies to the writers of jurisprudence. You must remember that the theologians did not dominate the jurists in Scotland, though they may have modified——

6605. It may be my ignorance, but I was under the impression that John Knox had a very important influence on the legislation of the country?—They may have had influence, but they certainly did not dominate.

6606. That being the case with adultery, how do you account for desertion having come into the law as a ground for divorce?—Well, I accounted for that by the historic case of the Earl of Argyll in the first instance. His case was a case of such hardship that it was recognised there must be a remedy, and the remedy, not being part of the common law, or not being given by the common law, a statute was introduced in 1573, which, I think erroneously, in the preamble says it was part of the common law.

6607. But what I rather mean was, I did not quite follow what your view of the sanction of that was; or, rather, what their view of the sanction of it was: what was it granted on? May I just ask this first to make it plain. Would you agree that the position with regard to adultery, and the position with regard to desertion on biblical grounds is quite different?—I think so.

6608. I ask that to clear the ground. Now, will you tell me how they came to adopt desertion?—I think they regarded it as I regard it as, at all events, an equal violation of the obligation of marriage, and, therefore, one which divorce *a vinculo* should be extended to.

6609. I notice you thought that when there had been a desertion for a great number of years, or for four years at all events, there was a reasonable inference—I think you said in nine cases out of ten—that adultery had also been committed, and that the absent spouse was not living a chaste life?—Yes.

6610. Could it be defended at all on the ground of that inference—that you might place it on the same ground as adultery, on a presumption that adultery had been committed, though the presumption is, perhaps, capable of being rebutted?—No, I do not think it could be defended on that ground, because, certainly in the better class, and where the woman is the deserter, one knows of many cases where she leads an absolutely chaste life, and that happens also where the man is the deserter sometimes. You could not draw any legal inference. All I said was, that in practice it would be found, if you knew the whole facts, that by extending the remedy of divorce to cases of desertion, you would not really embrace many people relatively who would not be divorceable upon the other ground.

6611. I see you quote from Lord Fraser's book this sentence: "There can be no doubt that malicious "desertion is as grievous a violation of the conjugal "vow as adultery, and, in expediency and justice, it "ought to be visited with a punishment equally heavy "with that meted out to adultery." And I understand your personal view is even higher?—It is.

6612. It may be of interest to point out that my edition of Lord Fraser is a much older one—1846—and Lord Fraser has altered his phraseology altogether, or made it very much stronger. I should like to put to you what he said in the edition I have. He says that "The authority for holding this as a ground of divorce"—that is desertion—"is traced by some to "apostolic sanction"—referring to what I think your Lordship referred to—"while others contend that the "words of the Apostle can bear no such meaning." "Be this, however, as it may, there is the authority "of high names in support of the doctrine that "malicious desertion is a more gross violation of the "conjugal vow than adultery and that in expediency "and justice it ought to be visited with a punishment "equally heavy." I point that out because apparently Lord Fraser's view grew as time went on?—I say it matured, and I think it makes his opinion in the later edition more important, that he entertained it doubtfully in the earlier edition.

6613. I thought you would say so, but I think it is of interest to point out that there is that development in his view?—In 1846 Lord Fraser must have had a comparatively short experience of procedure in the Scottish courts because I do not think he can have been called to the Bar more than half a dozen years before the first edition of his book. In 1879 he had not merely been a long time at the Bar and held the highest office, but he had been a judge for many years. I am speaking from recollection, but I should not have thought he was called to the Scotch Bar perhaps earlier than 1840.

6614. Now I want to ask you a word about your view as to penal servitude being a ground for divorce. What occurs to one, and no doubt has occurred to you, is that one cannot altogether confine one's notice to the innocent spouse who is left at home. You must have some regard to the convict. Is it quite just to

add to a sentence of penal servitude a potential divorce for a man's wife no matter how long the sentence is?—Well, I think so. I think you have much more to consider the feelings of the injured woman. She is deprived of her husband's society by his fault. She is subject to all the stigma which attaches to the wife of a criminal, and if her feelings towards her husband are such that she would desire to be permanently relieved of the bond I think these are to be considered very much more than the feelings of the convict.

6615. You yourself mention the crime of embezzlement which is not a crime of violence. Take a case of manslaughter say—a crime of violence through sudden passion, but not pointing to any permanent depravity of character. Would you say the same in a case of that kind?—My answer is that the wife if she has lived on affectionate terms with her husband would never bring an action of divorce against him upon such a ground.

6616. But you will forgive my saying it, but is not that rather a weak way of dealing with it, because you put it in her power to do it?—Yes.

6617. It is a potential divorce. The spouses come to one another for better and for worse, and so on. Is not it one of those misfortunes or troubles which they have contracted for in the first start?—No, I think "for better or for worse" means not what you have brought upon yourself by your misconduct, but what Providence has decreed to be your lot. May I point out that in our law, as it stands, husband's crimes are a ground for separation at the instance of the wife.

6618. Oh, they are?—Yes, and I refer to Lord Fraser's book, page 890, where he says: "The husband's "crimes, as being productive of personal danger to the "wife, as debasing her mind and corrupting her "morals, are, it is said, just causes of awarding to her "the remedy of separation. If he were a thief or a "resetter of thieves, or a person abandoned to unlaw-"ful practices in any sort, his wife is not bound to "conjugal adherence, which undoubtedly would render "her in many respects partner of his infamy." Therefore what I suggested would not operate any greater hardship on the convict whom you figure than the present state of the law if a wife chose to avail herself of the remedy.

6619. Are cases of the kind common, separation for crime?—Exceedingly uncommon, I should say, and for this reason, that in the criminal class, I may say there is not marriage to begin with—I mean in the class of professional criminals; they are living with women, but they are very seldom married to them, and where you get into the higher state of society, where people in respectable positions have committed crimes, you do not find the woman take advantage of the law as it at present stands to obtain a separation.

6620. Then it is not a point of great practical importance?—It is a point of very small importance except that I think the law should be theoretically as well as practically just.

6621. About insanity in the same way. Have you considered the case of incurable disease. Take the case of hopeless paralysis, where a man or a woman is, so to speak, a living corpse, I was going to say, or is hopelessly paralysed, and none of the duties of married life are possible at all—a hopeless invalid and paralysed, would you say that was a case for divorce?—No, I think that is a case where you take a man or woman, as the case may be, for better or for worse.

6622. Is not the line between that and incurable insanity a very thin one?—Well, I think not, because in the first place, I think most doctors would tell you that insanity in a large majority of cases is the result of personal misconduct or excess. If, for instance, you were to ask Dr. Clouston, of Edinburgh, he would tell you that in the vast number of cases drink is the cause of insanity, or has contributed to it; but, apart from that, there is the special reason you refer to with regard to offspring.

6623. Before you go to that, might I ask a question on the answer you have just given. You would not say all cases of hopeless insanity are the result of the person's own doings?—No, not by any means.

6624. Would you limit it to such cases where the fault is the fault of the person himself?—No, because I think insanity should on public grounds be a reason for divorce—in the option, again, of course, of the sane spouse.

6625. I wanted to ask a question about children. You were going to speak about children—the dangers of bringing into the world children with the taint of insanity on them?—Yes.

6626. Is not that a ground, if effect is to be given to it, for compelling divorce, and not for leaving it optional?—Well, I think a woman would consider that it might be safely left to her to consider whether she should run the risk of being the mother of children tainted with insanity. Might I say, with reference to the distinction between an insane husband or wife and a paralysed husband or wife, that the mental faculties of course in the case of a paralysed husband or wife may remain equally acute, and, of course, the feelings might be grievously outraged in such a case by proceedings for divorce being applied for against an invalid, which would not apply to a person in a lunatic asylum.

6627. I suppose that would depend on the degree of the insanity. Some insane persons, I suppose, would be perfectly conscious of the indignity put upon them by a divorce?—No doubt, but still there is enforced separation by confinement in a lunatic asylum, whereas in the case of an invalid wife or husband there is no separation at all.

6628. But is there not actual and absolute separation in the case of a hopelessly paralysed person as I put?—No, I have known of such remaining in family with the children and husband till their dying day.

6629. I do not mean not in the particular house, or the particular room, but as far as any society is concerned the afflicted person is dead?—There can be no conjugal intercourse of course, but if that were the test you might open the door very wide, and when I suggest divorce for insanity it is on the footing that there should first have been three or four years of compulsory detention in a lunatic asylum followed by a certificate by a doctor that there was no possible chance of recovery.

6630. And you are, no doubt, aware that those certificates are never really certainly accurate, and that people do recover even after certificates by the most noted doctors that they are hopelessly insane?—But have they ever been given after four years' actual confinement?

6631. I cannot tell you, Lord Salvesen?—It seems to me, after you have four years' actual confinement in a lunatic asylum without recovery, or any appearance of recovery, you can then have a pretty good indication that it will be continuing insanity.

6632. I wanted to ask you one question about the case you have told us of with regard to the lady who tried nullity proceedings and failed, and then went and committed adultery in order to get a case for a divorce?—Yes.

6633. Was her misconduct with her second husband shown to be after the failure of the nullity suit?—Oh, yes.

6634. It was?—It was, but she had become attached to the man in question before she brought her nullity suit, but, I suppose, desired to avoid any breach of morality, and so brought the action of nullity to enable her to be free to marry.

6635. (*Lord Guthrie.*) Do you, in reference to Scotland, attach importance to the inquiry we are now conducting?—I do, because, although I think the law of Scotland is in substance on very sound lines, still it admits of improvement, and I should like to see that it should be brought up to date.

6636. Then, apart from anything that may ultimately be done for Scotland which, of course, this Commission cannot recommend, do you think whatever is done in England and for England will necessarily, so far as it differs from the present Scotch law, have a very important bearing?—Yes, because, if there was, for instance, a proposal to introduce into England the

law of divorce for desertion, it seems to me it should not be introduced except with those improvements in our law that I have suggested.

6637. And if there was a proposal in England to introduce divorce for cruelty, it is almost necessary that that would be adopted in Scotland?—Yes.

6638. Is it your experience that the judges in Scotland, including yourself, have full experience of all cases criminal and civil, and, in civil, matrimonial causes?—Yes, in general practice one has to undertake a certain number of divorce cases. I do not know that there is anybody in Scotland who can pose as an expert in matrimonial causes, because we have too small a number, I think, to make it possible to specialise.

6639. You referred to a number of illustrations drawn from the criminal courts. You have had experience in all branches of criminal law?—Yes.

6640. Both as counsel at the Bar and law officer of the Crown, and as a judge?—I have had a fair share of experience.

6641. There are one or two terms you used which I should like to ask you about. With regard to the sheriff substitute, is it a fact that he has in Scotland more general experience of suits than the county court judge in England in so far that he has cognisance of criminal matters?—He has a much larger experience in every way than the county court judge, yes.

6642. Is that shown by the number we have? How many have we in Glasgow?—I think five now.

6643. And in Edinburgh?—There are two.

6644. You referred to an Act of Sederunt. What is that?—Well, that is regulations which the court issues, in reference to procedure before it.

6645. And the Legislature in many cases gives by statute large powers to the court to vary procedure?—To both vary and to regulate its own procedure.

6646. You referred to a *curator ad litem*. What is that?—Well, that is an officer who is appointed to look after the interests of an insane litigant, or a suitor who cannot conduct a case on his own account.

6647. In Scotland we have no resident barristers anywhere except in Edinburgh, differing in that respect from England?—That is so.

6648. With regard to the county courts and the sheriff substitute courts, in your view it is not merely a question of the capacity of the county court judge or of the sheriff substitute, but of the kind of Bar he has in one town as compared with another?—I think that is a very important matter, because after all a judge is very dependent on the capacity and honour of the Bar who plead before him, and in the Supreme Court the honour of the advocates is unquestioned. There is a class of solicitor in some of the large towns in Scotland upon whom such reliance could not be placed, and again in the smaller localities there are solicitors who have exceedingly little knowledge of court work, and who are not capable of giving much assistance to the judge in disposing of it.

6649. Then in your experience in Scotland as to the difference between the small and the large towns, if it were but a question of giving every county court judge in England, in however small a place, the jurisdiction as against the proposal to have centres in places like Manchester, Bradford, Sheffield, Carlisle, and so on, where there is a large Bar with experienced practitioners in each place, what do you say to that?—I should prefer central courts in convenient centres.

6650. What do you say about the advantage of having barristers or advocates in all such cases. Have not you found that these men habitually inform the court of difficulties both in law and in fact, and do so voluntarily in undefended cases?—I think they do because they have a very high sense of duty, and they would be very unwilling that the court should be induced to grant a decree on grounds which might afterwards be challenged, or by the concealing of evidence which it is material for the court to know. There was one case that Lord Gorell knows, where there was an exception, where I think he disregarded the decree on the ground of want of jurisdiction, but that is the only case that I know that has come to light where a decree of divorce has been obtained by counsel in such circumstances.

6651. (*Chairman.*) Is that where a man said he was a tea merchant in Glasgow?—Yes, he came to Glasgow and pretended that he had acquired a domicil, and the fact that he had not acquired a domicil was known to his counsel and the agent.

6652. And there was an inquiry afterwards?—There was an inquiry afterwards.

6653. (*Lord Guthrie.*) And I think that is the only case we have known in Scotland, and counsel and the agent were both very severely dealt with by the court?—Yes, they were; the matter having been reported, I think, from the court in England.

6654. With regard to our procedure. We have been told that in England in defended and undefended cases they may be set down for trial and do not come on, have you ever known that happen in Scotland?—No, unless where a case has been abandoned, but our system is to set them down for trial for a given day and the parties appear on that day.

6655. And in undefended cases they are always concluded on the day in which they are set down?—They are generally concluded within half-an-hour of the time.

(*Chairman.*) You may take it that is practically so in England with regard to undefended cases.

6656. (*Lord Guthrie.*) And in Scotland our practice is with undefended cases to take them on a Saturday which enables poor people, by only losing half-a-day, to come more conveniently?—Yes.

6657. You know in England it is said there is a remedy for the rich and not for the poor. When you were being asked about county courts, was it in your view that if county courts got jurisdiction in divorce they would have jurisdiction both for rich and poor, or that they would only have jurisdiction for the poor, which would in that way put the poor into a better position than the rich?—It is not our practice in Scotland to make any distinction between classes, and I do not see myself how you could exclude one class of person from a court to which another class had access.

6658. Then with regard to the origin of our system if suing in *formâ pauperis*. It is only a sentence and I think we might have on the note the actual words of the statute of 1424, chapter 25, which are very remarkable looking at their early period and the sense of justice which they show: "If there be any poor "creature for fault of cunning, or expenses, that "cannot nor may not follow his cause, the King, for "the love of God, shall ordain the Judge, before whom "the cause shall be determined, to purvey and get a "leal and wise advocate to follow such poor creature's "causes: And if such causes be obtained, the wronger "shall assythe both the party skaithed, and the "advocate's costs and travail"?—Yes.

6659. Does it follow that the full system was then instituted, because that leaves the right of the leal advocate and his agent, if successful, to make the wronger pay both the parties' skaithed or injured and the advocate's costs?—Yes, I think it contains our present system in kernel.

6660. You will remember well that is a Scotch Act by a Scotch king. He had been brought to England and had married an English wife?—Yes.

(*Chairman.*) Who is that?

(*Lord Guthrie.*) James I. who was 18 years in prison in the Tower.

(*Chairman.*) James I. of Scotland?

(*Lord Guthrie.*) Yes.

6661. The leal advocate there simply means loyal?—Yes. I do not know whether you suggest he got his wisdom from England; I should dispute that.

6662. With regard to reporting, you said you did not think that the full reporting in the public press acted as a deterrent. You, of course, have read many hundreds of letters in divorce cases. Have you ever seen any sign in such letters, dated before adultery, while it was going on and after it, of any such deterrent?—I do not think it is ever suggested in the course of an adulterous intercourse, because the object of parties is to conceal what is going on and they always hope to escape discovery.

6663. But you have seen evidence in such letters of great precaution being taken to prevent their being

found out?—Oh, certainly; that is a regular thing in defended actions, and a thing that shows how much a guilty person fears detection, but nevertheless takes the risk of detection.

6664. But the detection which the guilty person fears is not in the view of being reported in the papers but in the view of losing their position in society and the injury it will bring on their children and the pain on their relatives?—Yes; these are the main considerations.

6665. Do you advocate a shut court or an open court with a prohibition on the reporters as to reporting the details?—No, I think the press should be in the same position as the public, and therefore I would exclude both public and press.

6666. It has been suggested that in the interests of persons who are erroneously accused without any foundation, the full details should be given. In your experience in such a case does not the judge always take care, in his opinion, to make that quite distinct?—Yes; because, according to our system, it not depending on the verdict of a jury, the judge nearly always delivers a reasoned opinion, in which he deals with the charges made, and if he finds there has been an unwarrantable charge, he calls very pointed attention to that fact. I should conceive it my duty in such a case to absolutely clear the character of a person who had been improperly charged upon no evidence at all.

6667. And would not that be much more effectual than the garbled report that would necessarily not be full, which would be given in the paper?—I should think so.

6668. Do you think that the classes who haunt our Divorce Courts are entitled to any consideration whatever?—Those who usually haunt them are the loafing classes—the very lowest, who come in partly for the warmth of the court and partly because they think there may be something amusing or interesting; but when it is a defended case which interests the fashionable world, I am sorry to say a very different class of people attend, and I think they would be much better absent.

6669. If you are of opinion that such details should not be published, how do you distinguish between that publication and the publication of details of crimes which some people say puts it into the heads of others to commit?—Well, I think there is a distinction in criminal cases, because I think it would be against our views to shut any criminal courts except upon very special grounds. The punishment of crime after all concerns the community much more closely and nearly than the dissolution of a marriage between private individuals, but even in the criminal courts we exercise the power of excluding the public much more largely than we do in the civil courts.

6670. It has been suggested divorce might be carried through if the courts were shut in a hole-and-corner way. Even in the case of nullity, about how many people would you have present in court when the doors are locked?—I had a case of nullity last week from which I excluded the public, but I counted that of those interested in the case and entitled to be present there were no less than 16, including the parties, two counsel on each side, two agents on each side, and two expert medical men on each side, and these, with my clerk and the process clerk, made up 16 or 18 people, so that there were plenty of people to see that there was fair play.

6671. It has been suggested that the judge might either inform the reporters not to publish certain passages, or edit the reports. In your opinion is that practicable?—I should not like to have to edit the reports.

6672. Nor select the bits on the spot that the reporter should publish?—No. Besides it is not so much what you say as what you imply, and I think there might be a great difficulty in punishing newspapers and a hardship on them because they would not exactly know how far they were transgressing.

6673. With regard to the question of equality. It has been suggested that in addition to the five cases where a wife in England—her husband having committed adultery—can sue for divorce, there should be added another two, the first being open and continuous adultery, and the second being adultery accompanied with gross indignity to the wife. Does it seem to you to be any advantage to have a rule with seven exceptions rather than to leave the wife to judge for herself in each case?—I think the latter is much the simpler course, and the one which will in the ordinary way give the best results.

6674. Do you think it would be in accordance with the change of opinion which now credits women with the capacity of judging independently and soundly?—I think so.

6675. If it is a question of there being greater temptation in the case of the man or the woman, I suppose to carry that out logically there is the same distinction between different classes of men; between an actor, for instance, and a clergyman?—Yes, you would get all degrees.

6676. Then if it is a question of confusion of progeny, that arises if there is cruelty or desertion equally as if there is none, and yet when there is cruelty or desertion the remedy is given?—Yes, but is not that used to justify the divorce of women as against the divorce of men?

6677. Yes, it is, but in that case where the remedy is given you have the same distinction between the case of a man and a woman that there is with regard to the element of confusion of progeny?—No, I do not think so, because there is never any doubt who is the mother of a child.

6678. But you are assuming that in the case of a man he has had connection with an unmarried woman. But suppose he has had connection with a married woman?—Oh, yes, that is perfectly true. I was thinking only of adultery with an unmarried woman.

6679. With regard to the question of recrimination, it has been suggested, Lord Salvesen, that the law recognises the principle that only those who come with clean hands are entitled to a remedy. For instance, if a man breaks a contract himself he cannot sue the other party for damages for having broken the contract. Do you think that analogy has any bearing on the question of divorce?—I do not think it has, because I think the State is interested in the question of the dissolution of marriage, and when you are dealing with private contracts the State is not interested at all.

6680. And in the case I have suggested of the person suing for damages, the objection is taken by the other party?—Yes, it is. If it is not taken by the other party of course damages would be assessed.

6681. With regard to what you said as to cases of divorce undefended going through in 20 minutes, have you any experience, either as counsel or judge, of any hustling of divorce cases in Scotland?—No, in the nature of things where an action of divorce for adultery is undefended, as a rule it requires only the evidence of two or three people to prove the facts from which adultery can be inferred, and their evidence is given with the least possible details, only going to the facts from which the inference can be drawn; then, as there is personal service in these cases and neither delinquent appears, you have sufficient corroboration of their evidence in that way.

6682. You yourself referred to a case where a husband being away for years the wife registered an illegitimate child. Of course that only takes a few minutes?—There were plenty of such cases, I am sorry to say, during the South African war where women, who were left by their husbands, formed relations with other men, with the result that we had quite a crop of cases of divorces for adultery because of what happened during the Boer war. But that emphasises, I think, what I said at another stage, the danger of separating married people—I mean the danger to their morality, especially in the lower classes.

6683. Then take another case where the facts are simple and necessarily only occupy a few minutes. Supposing you have evidence that the wife at the time the action is going on is living with the co-defender in one house?—That is a very similar case.

6684. So that the shortness of time in taking these cases does not show a want of care on the part of the court?—No, it only shows that the evidence is so clear that it cannot be contradicted.

6685. You have been asked about collusion. What do you mean by collusion?—Well, a prior agreement between the parties that the pursuer shall obtain a divorce without opposition and upon insufficient grounds.

6686. Supposing you have an offence committed giving the right to divorce and the other party is arranged with not to defend and cause trouble, do you call that collusion?—No, I think that has been held in Scotland not to be collusion where there was no doubt that the right to obtain divorce had emerged, and I think Lord Young said that it was quite right that the wife should not interpose any obstacle to the husband getting his legal remedy, and that it would not be collusion on his part if she arranged with her husband that she would not put in a defence—recognising the validity of his claim.

6687. Supposing, secondly, that they arrange to manufacture evidence of an offence which never took place, that is fraud?—Yes, and of course that would be a decree that would be reducible at the instance of either.

6688. Then thirdly, supposing that one of the parties resolves to commit an offence—adultery, say with another woman—in order to make it possible for his wife to get a divorce. I fancy in that case he would not tell the wife at all?—No, because if he did she would be guilty of connivance, and would be barred from suing her remedy.

6689. And similarly with desertion. He does not arrange with her to desert. He goes away and does it?—Yes, I have never known of arranged cases of desertion.

6690. With regard to what you said about jurisdiction. In the state of the English law as contrasted with the Scotch, that makes more trouble with jurisdiction by English people not having a remedy for desertion open to them coming to Scotland and trying to pass themselves off as Scotch?—I think that is the practical aspect of it. If the grounds of divorce were precisely the same in either country there would not be any inducement to go to Scotland to obtain a remedy which you could obtain in England upon the same terms.

6691. Have you had it also with Irish people who have no divorce at all?—I cannot at this moment recollect any particular case, but I have no doubt such cases do occur. I certainly know of Canadians coming to Scotland for no other object than to obtain a divorce for desertion, there being no law of divorce for desertion in Canada, and the courts have held that if they have acquired a genuine Scotch domicil we have jurisdiction to entertain their case, but there is always a doubt as to the genuineness of a domicil acquired for such a purpose.

6692. We had a case where an Englishman took a shop and started a business, and got his divorce for desertion, and the shop was shut in a few weeks after?—Yes; it was not known that he would do so, of course.

6693. No; he swore he had made Scotland his home. In regard to drink. If, as we all hope, the drinking habits of people will continue to improve, would you expect that would have an important effect in lessening the number of divorces?—I am not very sanguine of that, because I think human nature is essentially weak and prone to vice, and if you do not have vice in one direction you may have it in another; but at the same time there is no doubt that drink has a certain relation to sexual immorality, and you might expect a diminution in it with the improvement of the people in temperance.

6694. Well, take any case you like, adultery, desertion, crime, cruelty, insanity: is not drink to be found in a very large proportion of every one of those cases?—Yes, I agree.

6695. Then, if so, and you eliminate that element, while it would not extinguish the Divorce Court, would not you expect it would affect it materially?—Well, in so far as it conduces to the general raising of the moral tone.

6696. And, therefore, if that element was removed, you would expect, at least, some improvement?—Yes, I think possibly a marked improvement—certainly in the case of desertion, because in a large number of these what precedes the desertion is a course of intemperance.

6697. Is it not the most familiar case with us to find the three elements in the working-class cases of divorce for adultery, first, no children; secondly, drink; thirdly, a lodger?—Yes, I think these things often concur.

6698. You were asked about the Scotch view of marriage. Do you think that the Scotch view of marriage as a contract involving the status which the State has an interest to preserve, has any bearing really on the question of divorce?—Well, I am not quite sure that I understand the question.

6699. As distinct from any view of the marriage necessarily involving the intervention and sanction of the Church?—Well, I think there again it all depends on the attitude of the Church to divorce. So far as Scotland is concerned, the attitude of the Church to divorce is practically the same as the attitude of the Law Courts to divorce.

6700. What I rather meant was this: Do you think the number of our divorces in Scotland would be in any way affected if we took a different view of the marriage contract from what we do?—You mean, if the courts took a different view?

6701. Yes?—Well, that depends entirely on what view they took. I can conceive their taking a view that might do that.

6702. Take our administration of our law as it stands. Do you know if our divorce at all depends on our thinking that marriage can be entered into between the parties as any other contract?—Oh, it has nothing to do with that, because the vast majority of cases in Scotland are entered into *in facia ecclesiæ*.

6703. But we allow marriage to be entered into without the intervention of Church or State?—Yes, but the proportion of those cases is infinitesimal.

6704. Have we always taken the view that whatever may be the law as to marriage the State must have a say as to the dissolution of marriage?—Yes.

6705. And are the views you have expressed as to the grounds of divorce in accordance with that principle?—Yes, I do not know whether I have stated it, but it certainly is my opinion that divorce by consent of parties is not expedient.

6706. Because the State has no say in the matter then?—Yes.

6707. That would be to introduce a new principle?—Yes.

6708. Do you think any of the views you have expressed introduce any essentially new principle?—Not at all.

6709. Do they all conform to the view that whatever renders the marriage relationship unreasonable and impossible should be grounds for divorce?—Yes.

6710. In Scotland you referred to the divorce for adultery coming in without any statute. I see Lord Fraser, on page 1139 of his book, brings out that immediately the Reformation took place, the Church itself, apart from the Law Courts, took upon itself to issue decrees of divorce?—Yes.

6711. Is it a fact then that the rule adopted by the State has not been questioned by the Church, but that persons who have acted upon it, as far as you have heard, have been admitted to all the privileges of the Church?—Oh, always. I do not think that they have ever been denied the privilege of communion in Scotland because they resorted to the remedy of divorce.

6712. With regard to the Episcopal period, between 1660 and 1690, to which reference was made by the Archbishop; do you understand how the Church, which during that period followed the lines previously laid down by Archbishop Laud, could be stated not to be a full Episcopalian Church?—No. But that is a theological matter that I do not profess myself to be fully conversant with.

6713. With regard to the intervention of State in this question of divorce, do you also find that Lord

Fraser points out that, at one time, divorce was prosecuted by the Crown, the Procurator Fiscal acting in the matter?—I was not aware of that. I had not observed that.

6714. Now, with regard to what you said about the law relating to divorce coming from 1560. Was it a fact that before that date there were extraordinary abuses through the Church of Rome apparently in order to conform to the necessities of the situation sanctioning divorce *a vinculo* in the sense of affirming decrees of nullity?—Yes. Upon grounds which we would regard now as quite insufficient; I mean dissolution of marriage because of alleged incestuous relations—as the marriage of first cousins or even fourth cousins. Such marriages were annulled by the Ecclesiastical Courts really in order to provide a remedy for the rich which the Church could not otherwise give them.

6715. That question has been fully dealt with in a book by a very authoritative writer, Dr. Hay Fleming, just published, called "The Reformation in Scotland," in chapter 13, which is headed "The consequences of the Reformation: Marriage Law Reform"?—Yes.

6716. Page 495?—Yes.

6717. In which, I notice, he deals with two typical cases, the one being that of Queen Margaret Tudor, the wife of James IV. of Scotland, and sister of Henry VIII. of England, and sister-in-law of Louis XII. of France, and double grandmother of Mary Queen of Scots, and, therefore, the direct ancestress of the present King. In that case she divorced her second husband, the Earl of Augus, on the ground of pre-contract, because, before his marriage to her, he had been contracted in marriage with the daughter of the Earl of Bothwell?—You mean annulled.

6718. Yes, as it was called then. Then she married Lord Methven and then got a decree against him on the ground that he was fourth cousin to Angus, and being fourth cousin in consanguinity to Angus he was fourth cousin by affinity to her and therefore the marriage was bad?—Yes, I should have thought that was a very bad position in law, because if the marriage with Angus had been annulled there could be no affinity.

(*Sir Lewis Dibdin.*) I think it would be fair to say that this was all before the Council of Trent

(*Lord Guthrie.*) It was in 1525.

(*Sir Lewis Dibdin.*) Yes, well, that was long before.

(*Lord Guthrie.*) Yes. It is fully gone into in that book.

6719. Now is it not the case that in Scotland we think that our rules with regard to adultery and desertion are both consistent with scripture?—Yes, I think it must be taken that the Presbyterian Church and the Protestant Churches of Scotland generally so regarded it.

6720. And is it the fact that in our marriage service in the Presbyterian Church what takes place invariably is that in the course of the ceremony the minister says "I declare you to be married persons," and adds "What God hath joined together let no man put "asunder"?—I think that is very common form.

6721. Do you see anything inconsistent with that in the Scottish law?—Not the least, because they are dealing with the probable consequences of marriage and not with exceptions which are not contemplated at the time.

6722. And does that express accurately our ideal of what ought to be and what we hope some day will be the result in every case?—Certainly apart from grave violation of the conjugal vow on the part of either.

6723. With regard to desertion, does what you have said come to this, that whereas adultery is a breach of the contract, desertion brings it to an end?—Well for practical purposes it does.

6724. And in the administration of the law is it the fact that the necessity for holding the desertion to be malicious has prevented decrees being got in many cases?—Oh a good many cases. That has just been the difficulty. When one would have been very glad to give a decree, one has been precluded from doing so by finding there had not been that desire for adherence on the part of the pursuer which the law has hitherto demanded as a pre-requisite.

6725. Do you expect that any of the additional cases you have mentioned, crime, drink, or lunacy would add substantially to the number of cases?—Well I can only give a sort of rough idea of my own. I think they might increase them by 10 per cent.

6726. Which most?—Probably insanity.

6727. Assume from me that it is the fact that the percentages of divorces in England per 100,000 is two, and that in Scotland it is four, do you think that is accounted for by the three causes you mention, the cases of the poor, the equality of men and women and the addition of desertion in Scotland?—I think so, amply accounted for. Divorce for desertion alone accounts for the difference.

6728. If the view were taken that what ought to be sought in this matter is a reasonable compromise, do not you think in Scotland we have a very reasonable compromise as the law at present exists without extending into the other causes?—Yes, but I should like that the law should be made completely satisfactory if it is to be changed.

6729. It has been suggested that the judge might do more in the way of reconciliation than he at present does. Do you think there is anything in that?—No, I think, if the friends of the parties have not been able to prevent action being taken, that you may assume that no intervention by an official, however eminent, would have the smallest effect.

6730. That might not apply in cases in the sheriff court or the county court for separation?—Oh, I think there there is a distinction. But when people seek the remedy of divorce, whether for adultery or desertion, it is because they have made up their minds that the married life cannot be continued, and nothing will shake that conviction.

6731. Then does it come to this, that you have not seen any bad results in Scotland as compared with England from the law as it stands with us?—I think our law, as far as it goes, is excellent and is in entire accord with public opinion.

6732. And conducive to public morality?—And conducive to public morality.

6733. Lastly, you have had a very intimate knowledge of Norway all your life?—Yes.

6734. Both your parents being Norwegians?—Yes, I know it as well as Scotland.

6735. And you have kept up a close connection with it and know the language intimately?—Yes.

6736. Have you seen in Norway from the state of the marriage law there any evidence of a less sacredness of view with regard to the marriage relationship than in this country?—No, I should say the morality of the Norwegian people, as a whole, stands extremely high. I should doubt whether there is any country at all where the general morality is higher than it is in Norway. The people are very like the Scotch; they are a very religious people by instinct, and I suppose people who inhabit mountainous countries are naturally inclined to be religious, and they live very simple lives, and the population is very small relatively to the large area they inhabit. All these things are favourable to morality, but the law of divorce in Norway has quite recently been amended, and I think, on the whole, judiciously.

6737. With one exception, mutual consent?—Yes, I do not approve of mutual consent, but in point of fact divorce is not much resorted to outside the capital. You always have the worst elements congregated in the capitals.

6738. Then do you think that if the extensions were made which you have suggested for England there would be anything of what may be called a rush to the Divorce Court?—I think there might be for the first year or two, but I should imagine that when things had settled down the proportion would be very much the same as in Scotland. That is to say, that there would be something like 1,600 cases per annum, of which perhaps 160 or 200 would be defended, and that would not involve any great additional work. In Scotland, with our 200 cases, the increase of work is really negligible, because, apart from such exceptional

circumstances as the Stirling divorce case, probably there is not much more than a month of judicial time on an average consumed in hearing divorce cases; perhaps a month to 40 days.

6739. (*Mrs. Tennant.*) Can you enable us to compare the position of a wife who has obtained an order for separation and aliment in the sheriff court in Scotland with a wife in a similar position here? Is she forced to let a month elapse first? If her husband ignored the order, what would be the position?—I know in the usual aliment cases in Scotland the usual decree asked for is that the aliment should be paid in advance, and such decrees are generally granted. There is always a space of time before you can get a decree, but when once it is obtained, it is enforced in advance.

6740. She is not exposed to the same risk of starvation then while she is waiting for the intervention of the court?—Well, a woman is always a fit object of parochial relief if she is deserted by her husband.

6741. But the alternative is starvation if she does not care to avail herself of parochial relief?—Yes, if she is too proud to accept relief from the public.

6742. How is the order enforced when it is made in advance?—It may be enforced in all the ways in which a decree of the court may be enforced against the property of a debtor, but it may also be enforced by imprisonment.

6743. May not the husband's wages be attached if he has more than a certain weekly sum?—Yes, we can secure payment of any debt in Scotland by arrestment, and any workman who earns more than 20s. a week is liable to have his wages arrested week by week so far as they exceed that sum in the hands of his employers. Therefore, if a wife can trace her husband into any good employment she is always sure of getting the surplus by way of aliment.

6744. The Act being in existence so short a time, I suppose there are very few statistics?—There are only a year-and-a-half of statistics which I have given. If the Commission desire I will leave them.

6745. (*Chairman.*) You had better hand them to the shorthand writer?—Yes.

6746. (*Mrs. Tennant.*) You do not happen to know in how many cases arrest of wages has been resorted to?—No, I have no information on that subject.

(*Lady Frances Balfour.*) You said the laws of divorce in Norway have been greatly improved or altered?

6747. (*Chairman.*) Might I say we have had the recent statute. I was going to ask if Lord Salvesen with his great knowledge of Norwegian would be kind enough to send us a translation of that part of it which says what the causes of divorce are?—I shall be very pleased to do so. I was rather interested in knowing what the law was there, and I have the whole Report of what corresponds to the Royal Commission which preceded the legislation, and that shows that they went into the matter with the greatest possible care.

6748. Is that in Norwegian?—Yes, but I will give you the result of it. You wish the part of it referring to the causes for divorce? (App. V., p. 43.)

(*Chairman.*) Yes.

6749. (*Lady Frances Balfour.*) It has been suggested to you to-day here that in Scotland marriage is regarded more as a civil contract, and that the Church has adopted that view, it was rather understood, because the Church had not got a liturgical form; but that does not prevent it being regarded from a much higher point of view than a civil contract, does it?—I do not think from the theological point of view it is regarded as a civil contract at all. I was only speaking from the point of view of a lawyer; from the point of view of Scotch law it is regarded as a contract, but a contract of a peculiar and special kind.

6750. The marriage form used by the Church tends to show it is looked upon as much higher than a civil contract?—Certainly. I do not think there is any difference between Presbyterians and Episcopalians from that point of view.

6751. (*Chairman.*) There are one or two questions I should like to ask you. You told us that divorce arises from people who could not get relief on the ground of desertion in this country, attempting to do so in Scotland, and effecting, or trying to effect, a domicile in Scotland?—Yes.

6752. There may be other difficulties, I daresay, but does that lead you to think that uniformity of the law would be a great thing between the two countries?—I think with regard to the law of the marriage relation it would be a great thing.

6753. That at present is exciting considerable interest in Scotland in consequence of this Inquiry, or the subject of this Inquiry is?—Yes. I think, provided the law was in accordance with Scotch public opinion, it would be very desirable that it should be uniform with that of England.

6754. I was going to put it on a little larger ground than that. Does it not rather lead to a suggestion of the desirability of uniformity of the divorce laws throughout the United Kingdom?—I should think so.

6755. And then throughout the British Empire?—Yes.

6756. And possibly throughout all the white nations?—Yes, of course you have to educate public opinion up to the standard.

6757. I agree, but uniformity throughout all countries might be of great benefit to the world at large?—I think very much so.

6758. One other point on this larger question. I have not had the opportunity of reading the evidence, but some suggestion was made, I think, that possibly there might be a different ideal between the Church and the State. Do you see any difference at all in the ideal that each seeks to attain with regard to marriage or divorce?—I do not see why there should be.

6759. The object is to attain to the higher sanctity of the highest class of life that can be attained to?—Yes.

6760. Though there may be differences as to how that is to be attained?—Yes.

6761. Now you have not in Scotland any resident Bar except in Edinburgh?—No, that is to say, no Bar that can practice before the Supreme Court.

6762. You know we have in England very large centres?—Yes.

(*Chairman.*) I daresay Mr. Brierley could tell us what the Bar is in Manchester.

(*Mr. Brierley.*) Not far short of 100.

(*Chairman.*) That is in addition to Liverpool?

(*Mr. Brierley.*) Yes.

(*Chairman.*) And other large centres like Birmingham, Bristol, and so on.

6763. You would see no objection to having the court sitting at towns where it could be reached easily by the local Bars?—No, providing by the local Bar you mean the barristers, because I think you always have a certain guarantee that a barrister is a man of honour, and also of legal attainment.

6764. Then with regard to the different kind of work that is involved in this class of work from others. Your Bar in Scotland takes all kinds of work?—Yes.

6765. There are no specialists in divorce work?—No, I do not suppose all our divorce cases, though they were in the hands of one man, would yield him much more than a respectable income.

6766. You said, I think, in answer to his Grace the Archbishop, that Episcopalians did resort to the Scotch courts on the ground of desertion?—Yes, I know of no difference between Presbyterians and Episcopalians in that respect.

6767. Can you say how many cases you have noticed of that character?—I cannot say the number of the cases but I can say I have had people who were married according to the Episcopalian rites, sung for divorce.

6768. On the ground of desertion?—On the ground of desertion and adultery.

6769. Separate or combined?—Oh separate.

6770. Have you the reference to the Statute of 1907—your Act—which we can refer to after?—That is the Sheriff Courts Act.

6771. Yes?—I have not the chapter, but it is the Sheriff Courts Act of 1907. That, I think, is a sufficient reference.

6772. Have you any restriction in Scotland as to asking the petitioner questions as to his conduct. I do

not know whether you know the restriction in England?—No.

6773. Well if a petitioner goes into the box to present the case against the respondent no question can be asked to show that the petitioner has been guilty of adultery, unless he has previously denied it. Have you any restriction of that kind in Scotland? Not even the judge can ask the question here?—No, I do not think we have any restriction of that kind. The only restriction we have is that nobody who is not a party to the suit can be asked or compelled to answer any question which may tend to implicate him in a charge of adultery.

6774. But does that extend as far as the party to a suit?—It does not extend, as far as I know to parties but only to witnesses.

6775. And if a party becomes a witness does it include that?—Oh no, it means third parties.

6776. In England if a party is a witness and even at any other time the party cannot be asked such a question?—Well that is not in accordance with our practice.

6777. Unless they have already given evidence denying it?—That is not so with us.

6778. One other point. You mention the fact of separations between husbands and wives during the Boer war?—Yes.

6779. Did you get many cases of that kind?—Yes, I think the statistics will show you that there is a marked increase in the number of divorces about that period in Scotland which I attribute mainly to the Boer war.

6780. Are those the 1902 figures. It is 223, and the previous was 171?—In 1902 we reached the high water mark of divorce for adultery.

6781. I have not looked at the statistics but I know there were many cases that came before one in this country in consequence of that. I thought you said that that illustrated the effect of separation on people?—Yes, especially in the class which has less capacity for self-restraint.

6782. In giving your evidence have you had the points which you have expressed views about considered by yourself and your colleagues in Scotland?—Yes, I have discussed them generally with my colleagues of the Outer House, and I may say there is substantial unanimity on all the points on which I have expressed myself; and I have submitted my proof to the Lord President who authorises me to say that he entirely concurred in every one of my opinions. Beyond that I only know generally as to the views of the Inner House, but I think the views of the Outer House and of the Lord President may be considered as substantially representative of the views of the Scotch Bench.

6783. (*Chairman.*) I think I ought to thank you very much on behalf of the Commissioners for your extremely interesting and valuable evidence.

The following is a Table handed in and referred to by Lord Salvesen.

N.B.—The Sheriff Courts Act, 1907, came into operation on 1st January 1908.

LIST of the NUMBER of ACTIONS for ALIMENT and of SEPARATION and ALIMENT raised in the undernoted sheriff courts in Scotland since the passing of the Sheriff Courts Act of 1907 (28th August 1907).

Court.	Aliment all at the Wife's instance.	Separation and Aliment.		Separation only.	
		H.	W.	H.	W.
Ayr:					
Ayr	5	–	9	–	1
Kilmarnock	2	–	6	–	–
Aberdeen	2	3	35	–	–
Dumbarton	1	–	15	–	–
Fife:					
Dunfermline	–	–	10	–	–
Kirkcaldy	5	–	8	–	–
Cupar	2	–	8	–	–
Forfar:					
Dundee	–	–	9	1	1
Forfar	4	–	4	–	–
Arbroath	1	–	2	–	–
Inverness	–	–	8	–	–
Lanark:					
Glasgow	145	–	310	3	2
Hamilton	13	–	35	–	–
Ardrie	8	–	10	–	–
Lanark	2	–	4	–	–
Perth	–	–	9	–	–
Renfrew (Paisley ward)	5	–	7	–	–
Stirling	2	–	6	–	–
Dumfries	1	–	4	1	–

Mr. JAMES BANNERMAN LORIMER, W.S., called and examined.

6784. (*Chairman.*) You are a Writer to the Signet in Edinburgh?—Yes.

6785. Carrying on your business and residing at 30, Frederick Street, Edinburgh?—That is so.

6786. You are a member of the Society of Writers to His Majesty's Signet?—Yes.

6787. And you represent the Writers to the Signet Society on the Board of Reporters on *probabilis causa litigandi* of applicants for the benefit of the Poor's Roll?—Yes.

6788. In addition you act as secretary and clerk to the Board?—Yes.

6789. In that way you have become familiar with the working of all its branches of the Poor's Roll system in the Court of Session, and the procedure whereby litigants apply for and are admitted to the benefit of that roll?—Yes.

6790. And you claim knowledge of the poor law system in its relation to divorce proceedings, and generally of divorce in relation to the poorer classes?—Yes.

6791. You have had to submit cases to the reporters?—Yes, I have had to submit cases to the reporters; that was years ago, when I acted as a poor's agent. Since then I have been in the position of reviewing cases as a poor's reporter.

6792. May I take it that you are thoroughly familiar with the whole of that system?—I think so.

6793. Before I had the pleasure of seeing you you sent us a short summary of points which it is necessary to look at to describe that system?—Yes.

6794. Now you have been good enough to prepare a complete memorandum dealing with it?—Yes.

6795. And you have divided that memorandum into four heads: the Poor's Roll system in Scotland, procedure for admission to it, and statistics as to the Poor's Roll in relation to divorce cases, and fourthly the question of expense in relation to divorce litigation?—Yes.

6796. May I take it this sets out with accuracy and clearness the whole of the points that are really worthy of attention as far as we are concerned?—I think so The only heading under which, perhaps, I feel more diffidence in speaking is the fourth heading, which is the question of expense in divorce litigation generally. I do not claim to be an expert in that branch of the law, though I have had some experience in it. I speak with more authority on that which actually deals with the question of the Poor's Roll litigation.

(*Chairman.*) Have you seen this memorandum, Lord Guthrie?

(*Lord Guthrie.*) No, but I am sure it is full and accurate. Mr. Lorimer knows the whole system thoroughly.

6797. (*Chairman.*) I daresay you heard Lord Salvesen's evidence?—Yes.

6798. And do you agree with what he said in describing the Poor's Roll system?—Yes.

6799. And this statement of yours is an elaboration of it?—Yes.

6800. Then I think that should be put in as your evidence?—Yes.

6801. (*Lord Guthrie.*) Does it suggest any improvement on our system?—No, I have not gone into that. I have only ventured to give you facts.

6802. And you have no suggestions to make arising from general experience in the way of improvement on our system?—I do not think so, my Lord. I think as far as I have had experience of the Poor's Roll system it works exceedingly smoothly.

6803. What do you say of the case of a litigant from the furthest north part of Shetland—say from Unst—who has to come by boat to Lerwick and then catch the steamer for Leith. The expense of coming from Unst would be about a 1*l.* would it not?—Probably.

6804. So that even there the expense of going and coming would be covered by 2*l.*?—Yes, you would never have more than the furthest limit of travelling expenses, and that could be done cheaply; that is practically the only outlay.

6805. And is the fact that in adultery and also in desertion cases the necessary evidence is very often to be got in or near Edinburgh?—Yes.

6806. Although a wife for instance may be resident in Shetland?—That is very often the case.

6807. It arises from the husband in such cases having gone to big centres and got into bad habits?—Yes.

6808. It does not therefore follow that the witnesses all come from remote districts?—No. I might say in many cases—in almost the bulk of cases—the litigant does not have separate expense in connection with each witness, because they are often members of his own family, and the matter is a family arrangement with regard to expense, and, as Lord Salvesen pointed out, I think, in many cases neighbours are willing to act as witnesses at their own charges.

6809. Have not you found cases where people have told you: We wanted to raise an action years ago, but we could not get the funds?—I have once or twice heard people mention that they would have raised an action sooner if they had known that there was this Poor's Roll system, but I do not think these complaints have been at all frequent and must have resulted from very imperfect enquiry on the part of the person.

6810. And do you think, generally speaking, people in Scotland have any difficulty in getting access to the necessary persons to get them on to the Poor's Roll?—None whatever.

6811. (*Chairman.*) Then will you give the shorthand writer your note?—Yes.

6812. And that may be taken as your evidence?—Yes.

6813. Is there any addition to that, or point that has occurred to you in consequence of the questions put to Lord Salvesen?—No, I do not think so.

(*Chairman.*) Thank you very much.

6814. (*Lord Guthrie.*) If Mr. Lorimer has any information about the working of the Poor's Roll system in relation to the new power given to the sheriff court with regard to separations he might give us that?—I think that appears in this note. As a matter of fact, there is one table of statistics I have made which shows that in the Court of Session as far as I have been able to ascertain it, there were only, I think, about three separation and aliment cases that came into the court—or at least three decrees were granted during the last year for separation and aliment. Certainly with regard to the Poor's Roll we have not had since this Act came into force a single case submitted to the reporters for separation and aliment. That I presume is accounted for by the fact that all these cases take place in the local sheriff court instead of coming before us as they did in the past.

6815. (*Chairman.*) Then you can throw no light on any costs connected with that?—No, I am afraid I cannot.

6816. They seem to manage it without applying to the Poor's Roll?—Well, the point is, they would apply to the local Poor's Roll system, so their cases would not come before the reporters.

6817. Have you any means of obtaining any information that might be laid before us as to the working of the local roll, say, for instance, from Glasgow?—I might ascertain whether I could get information from Glasgow.

6818. Yes, or any other locality—just to see if there was any information worth communicating, and if there is perhaps you would send it in the form of a short note?—Yes, I should be very pleased to do so.

6819. (*Mr. Brierley.*) The system spreads all over Scotland?—Yes.

6820. Do I understand it has been going on for some centuries?—Yes, more or less.

6821. I mean everybody in Scotland then knows, or every Scotch person knows, that there is such a system existing?—Yes.

6822. That there is a person to be resorted to in every district?—I think it is perfectly well known.

(*Chairman.*) I think we ought to thank you very much for your trouble in attending and preparing this memorandum. I think it is of great value.

Adjourned until Monday morning at 10.30.

NOTE.—*The following is the statement prepared and handed in by the witness as embodying his evidence:—*

MEMORANDUM of EVIDENCE by JAMES BANNERMAN LORIMER, Writer to the Signet, 30, Frederick Street, Edinburgh.

I am a member of the Society of Writers to H.M. Signet, and am in legal practice in Edinburgh.

I represent the W.S. Society on the Board of Reporters on *probabilis causa litigandi* of applicants for the benefit of the Poor's Roll, and in addition act as secretary and clerk to the board. In these capacities I have become familiar with the working in all its branches of the Poor Roll's system, in the Court of Session, and the procedure whereby litigants apply for and are admitted to the benefit of that roll. Looking also to the fact that the large majority of cases submitted to the reporters are (as I shall have occasion to point out later) matrimonial causes, I may claim to some knowledge of the Poor's Roll system in its relation to divorce proceedings and generally of divorce in relation to the poorer classes.

On the invitation of the Secretary to the Commission I have prepared this memorandum in case the Commissioners may consider that my evidence may be of use to them in their enquiry.

For the sake of clearness I have divided the subject of my evidence into three heads, viz.:—

I. The Poor's Roll system in Scotland.
II. Procedure for admission.
III. Statistics as to the Poor's Roll in relation to divorce suits.
IV. Question of expense in divorce litigation.

I.—*The Poor's Roll System.*

The privilege of being admitted to sue or defend an action in *formâ pauperis* rests upon an ancient statute of the Scots Parliament, Act 1424, c. 45. The provision rendered into modern English runs as follows: "If there be any poor creature who for lack of skill "or expenses cannot nor may not follow his cause, the "King for the love of God shall ordain the judge "before whom the cause shall be determined to purvey "and get a leal and wise advocate to follow such poor "creature's causes and if such causes be obtained "(won) the wronger shall indemnify both the party

" injured and the advocates' costs and travail (work)." The conditions entitling a party to the benefit of the Poor's Roll are:—

(1) A suitable degree of poverty; and
(2) A *probabilis causa litigandi, i.e.*, a probability of success, practically a *primâ facie* case.

The benefits of admission to the Poor's Roll are that the litigant (1) is thereby exempted from all court dues and charges, and (2) has his case remitted to a solicitor and counsel specially appointed to conduct his case gratuitously. Application for admission to the benefits of the Poor's Roll may be made by either pursuer or defender, and that at any stage in a litigation. A Poor's Roll exists for both civil and criminal causes, and litigants may sue *in formâ pauperis* after due admission both in the Court of Session and in the local sheriff courts. In the latter courts, however, the procedure for admission is slightly different from that in vogue in the Supreme Court, and as divorce causes are only competent in the Court of Session, it will suffice for the present purpose to confine consideration to the procedure applicable to litigation *in formâ pauperis* in the Supreme Court.

The constitution of the Poor's Rolls system in the Court of Session is regulated by a series of Acts of Sederunt or orders of the Supreme Court. The two main enactments now in force are Acts of Sederunt dated respectively 16th June 1819, and 21st December 1824. Without going into detail it may be stated that the former of these two Acts ordains that the Faculty of Advocates shall appoint annually six of their number to act gratuitously as counsel for the poor in conducting the cases of parties admitted to the benefit of the Poor's Roll. It is also provided that the Society of Writers to the Signet, and the Society of Solicitors in the Supreme Courts shall each appoint annual four of their members to act as solicitors in the conduct of Poor's cases. These nominees while acting are commonly known as poor's counsel and poor's agents respectively, and will hereinafter be referred to as such. In practice it may be mentioned that the Faculty of Advocates are in the habit of making the appointment from members who have not less than ten years' standing at the bar. The W.S. and S.S.C. Societies usually appoint poor's agents from among their junior members. Of the eight poor's agents appointed four are specially allotted the duty of preparing defences in criminal work and are not called upon, nor are they competent to act as poor's agent in civil actions. Poor's counsel are competent to act both in criminal and in civil cases. All the above appointments are for one year only and are not as a rule renewed at the end of that period.

The Act of Sederunt of 1824 provides that, in addition to the annual appointments of poor's counsel and agents above referred to, the Faculty of Advocates shall appoint two counsel and the Societies of Writers to the Signet and Solicitors in the Supreme Court shall appoint each one of their members to act on a board of reporters for considering the applications of poor persons applying for the benefit of the Poor's Roll for deciding whether or not they can show the two requisites for admission—a probable cause and a sufficient degree of poverty. The members of the board are called "Reporters on *probabilis causa litigandi*," or, more usually, Poor's Reporters. The appointments are usually for two years, and in the case of the representatives of the W.S. and S.S.C. Societies are frequently renewed from year to year. The representative of the W.S. Society acts *ex officio* as clerk and secretary to the board. This is the appointment which I hold at the present moment. All the above posts are unremunerated.

II. *Procedure for Admission.*

As the simplest method of illustrating the working of the Poor's Roll system it may be well to follow the steps of an application for the benefit of that roll from the moment when the litigrant decides upon action to the remit of his case to poor's counsel and agent for conduct.

The applicant applies in the first instant to one of the law agents (solicitors) for the poor, who is bound by the terms of his appointment to give him all necessary assistance gratuitously for obtaining admission to the Poor's Roll.

The first requisite is, that the applicant procure a certificate as to his poverty. This is a statement made by him in statutory form, setting forth:—(1) The applicant's name, (1) whether he or she is married, and, if so, the number and ages of any children of the marriage, (3) the length of his residence in the parish where he presently resides, (4) the amount of his property, if any, and of his earnings, and (5) whether or not he has any other depending lawsuit.

The facts stated in this certificate are deponed to by the applicant before a meeting of the minister and elders of the parish in which he resides, usually at a meeting of the kirk session of the parish church. The ministers and elders sign the certificate, adding a docquet stating either that the truth of the facts stated is within their personal knowledge, or that it depends entirely on the statement of the applicant. At least 10 days' intimation of the date of meeting of the minister and elders must be given to the adverse party (*i.e.*, the prospective defender in the proposed action) if his address is known, and it is competent for him to appear at the meeting where the declarations are made by the applicant.

Having procured a certificate as regards his state of poverty, the applicant through his agent has now to prepare precognitions of the witnesses by whose evidence he proposes to substantiate his case, that is, he has now to satisfy the reporters that he has a *probabilis causa litigandi*. This evidence may take any form which can be submitted to the reporters without the actual appearance of witnesses. In most cases evidence consists of written precognitions and statements by the applicant and other witnesses, together with such documentary evidence as marriage certificates, letters, &c.

When the case has been prepared a note or petition is presented to the Lord President of one of the divisions of the Court of Session, craving to have the case remitted to the reporters "to enquire and report whether the applicant has a *probabilis causa litigandi*." There is a provision that eight days' notice of the proposed application be given in the minute book of the court. The petition or note may be opposed by the adverse party, and the court may either *de plano* remit as craved or may refuse the application. Refusal to remit is very rare. The remit to the reporters is in most cases simply to inquire into the question of *probabilis causa*. If, however, there is opposition, the remit is made to include the question of poverty, in that case the remit is usually in these terms:—"The Lords remit to the reporters to report whether the applicant has a *probabilis causa litigandi*, and, also, whether in the circumstances of his application, he is otherwise entitled to the benefit of the Poor's Roll."

When the remit has been obtained the whole process is lodged with the secretary to the reporters, by whom it is circulated among the other reporters for consideration. Meetings are called by the reporters on an average about once a month in session, when all outstanding cases which have been remitted to them are reported on. From 10 to 20 cases are usually disposed of at each meeting. The reporters find that the applicant in each case either has or has not a *probabilis causa* and they report accordingly to the court that in their opinion the application should or should not be granted. If they are not satisfied with the evidence submitted to them they may continue the case for fuller statements. The meetings of the reporters take place usually in one of the court rooms at the Law Courts and due notice appears in the Rolls of Court. The applications may be opposed by counsel or agents for the adverse parties and under special circumstances the reporters may call and examine witnesses. The reporters are the sole judges whether the applicant has or not a *probabilis causa*. The court will not review their decision on this question unless there has been a gross miscarriage of justice or failure of duty on the part of the reporters.

Where a special remit has been made to the reporters as to the question of the applicant's poverty the court may review the decision of the reporters on the facts ascertained by them as to the applicant's means.

If the reporters pronounce a finding that the applicant has a *probabilis causa* and (if the question of poverty has been also remitted to them)—is otherwise entitled to admission to the Poor's Roll, the applicant's agent presents a second note to the Court of Session setting forth the finding of the reporters and craving that he may be admitted to the Poor's Roll and that a poor's counsel and agent may be allotted to him for the conduct of his case. The court grant this prayer as a matter of course, and pronounce an interlocutor admitting him to the Poor's Roll and appointing one of the official counsel and solicitors for the poor to conduct his case. In practice the solicitor and (if counsel has been required) the advocate who have acted for the applicant in the preliminary stages are usually appointed to conduct the case. By them the case is conducted to its conclusion, even though they may have ceased to be counsel and agents for the poor on the termination of their year of office. No other counsel or agent is permitted to take part in the case.

The case, thereafter, proceeds in ordinary form, the summons having the word "Poor" marked before the pursuer's name and the interlocutor granting admission to the Poor's Roll being lodged as a production in the process. An agent for the poor who refuses to act forfeits all rights to any fees which may ultimately be recovered and is liable to the censure of the court. The responsibilities of poor's counsel and agents to their clients are in all respects the same as in cases which are not sued in *formâ pauperis*.

With regard to the question of the recovery of expenses in the event of a successful action I propose to refer to this matter under the general question of the expense of divorce litigation in the last heading of my evidence.

There are certain statutory regulations which provide that the action must proceed within three months from the date of admission to the Roll. The order for admission ceases to have effect after that period if the intended action has not been proceeded with. It is also competent for the court on cause shown to recall the admission at any time and strike the litigant off the Poor's Roll should a change in his circumstances be brought to their notice.

In considering the application for admission to the Roll the court, and the reporters under the remit, have regard to all the circumstances, the means of the applicant, and the nature of the case. On this question the dictum of the court in an early case in point: "It is "not enough that it should be *inconvenient*, or even "highly inconvenient, for a party to bear the expense "of litigation; he must make out a case of necessity, "or we cannot listen to his petition."

It is impossible to formulate a more definite rule than the above general principle, and indeed there is a certain conflict among some of the numerous reported decisions. Thus admission was granted to a working man earning 23*s.* per week with young children dependent on him, while an unmarried man earning 24*s.* a week was refused. In an action for reduction of a deed on the ground of fraud the court granted admission to a man who, along with his wife and one child, earned 26*s.* per week. Admission was also granted to a man earning 27*s.* per week and having a wife and a family of four dependent upon him. On the other hand admission was refused in a case of an applicant earning 31*s.* 6*d.* per week, even though he had a wife and two children to support and paid a rent of 16*l.* per annum.

So far as it is possible to state any general rule it may be taken that 27*s.* per week is practically the maximum which would entitle an applicant to the benefit of the Poor's Roll, though in practice exceptional circumstances may justify deviations from this standard. On this point I should like to add that, speaking for myself, I am strongly of the opinion that the maximum wage entitling to the Poor's Roll is much too low. I think that persons earning 30*s.* or even 40*s.* a week might quite fairly be allowed to litigate *in formâ pauperis* (at any case in matrimonial cases). Their exclusion, to my mind, constitutes a considerable hardship.

III. *Statistics as to Poor's Roll in Relation to Divorce Suits.*

As I have had occasion to mention before, the large majority of cases which come before the reporters for preliminary consideration are prospective divorce actions. From the record book which I keep of cases submitted to the reporters I have made up a table of statistics for the year from November 1908 to November 1909. This table shows (1) the total number of cases passing before the reporters, (2) the number thereof which were divorce actions, (3) the number of divorce cases refused (either on the ground of insufficient poverty or lack of probable cause), and (4) the subdivision of divorce cases under the headings of cases laid on the ground of desertion and of adultery respectively.

Date of Meeting.	Total Cases.	Number of Divorces.			Divorces Passed.	Divorces Refused.	Other Cases.	
		Total.	Adultery.	Desertion.			Refused.	Passed.
Nov. 1908 -	14	11	8	3	10	1	3	0
21 Jan. 1909 -	11	10	3	7	9	1	1	0
5 March -	15	13	8	5	12	1	0	2
16 „ -	4	2	1	1	1	1	1	1
11 June -	16	14	2	12	12	2	0	2
15 July -	13	9	6	3	7	2	1	3
21 „ - -	1	—	—	—	—	—	—	1
9 Nov. -	21	16	4	12	15	1	1	5
	95	75	32	43	66	9	7	14

The period which I have taken may be accepted as typical of an average session. I could have taken statistics over a longer period, but I do not think that the result would be more instructive than the figures here given. The proportion of divorce cases to the total cases submitted will be seen to be roughly 78·9 per cent. I have taken into account the fact that frequently cases are not passed on the first application, but are continued for fuller statements of witnesses or further evidence. Such cases are usually ultimately passed. The cases refused are those where the reporters have decided against the applicant either for lack of poverty or want of probable cause. I may mention that since the passing of the Sheriff Court (Scotland) Act, 1907, which made actions for judicial separation on the ground of cruelty competent in the local sheriff courts, this class of case practically never comes before the reporters on Court of Session cases. There is no instance of such a case in the period taken for the above statistics.

In order to ascertain the proportion which the number of divorces sued in *formâ pauperis* bears to the total number of divorces sued in the Court of Session, I have prepared from the Minute Book of the Court of Session the table which I annex. In this schedule are shown (1) the total number of decrees of divorce pronounced in the Court of Session for the year from 15th October 1908 to 14th October 1909; (2) the proportion of that total sued in ordinary form; and (3) the proportion sued on the Poor's Roll. In all cases I have distinguished between divorces sued on the ground of adultery and those sued on the ground of desertion. The figures are as follows:—

Decrees of Divorce pronounced for Year 15th October 1908 to 14th October 1909.

Ordinary Roll	127	Adultery -	71	
		Desertion -	-	56
Poor's Roll -	64	Adultery -	34	
		Desertion -	-	30
Total decrees	191		105	86

I should perhaps mention that owing to the system on which the entries are made in the minute book of court, it is difficult to be certain of the comparatively small number of *unsuccessful* actions of divorce which may have been brought during the period covered by my search. Nor is it possible from the minute book to ascertain easily whether the actions were defended or not. I have in the circumstances confined my table to a list of the actions where decree of divorce was pronounced. I have made enquiries from the keepers of the Rolls of Court and various judges' clerks, and am informed that there were no exceptional circumstances in connection with last year as regards the roll of cases, but that it may be taken as quite typical of an average session. The proportion of poor's cases to the total number of decrees in the above table is equivalent to about 33·5 per cent.

IV. *Question of Expense in Divorce Litigation.*

(a) *In Poor's Roll Cases.*

Though the poor's agent is bound by the terms of his appointment to act gratuitously for his client he is entitled to recover full expenses from the unsuccessful litigant in the event of the success of his client's suit. In making up his account of expenses in such a case he is bound to charge the full court fees and other official dues, and, should he ultimately recover the amount of his costs, he must account to the Crown for the proportion of the total due to them. Of course, the right to recover expenses from the adverse party is in many cases of little value, especially in undefended divorce actions among working-class people. In a question with his own client the poor's agent is entitled to charge all actual outlays. It is not the intention of the legislature that the poor's agents should be out of pocket through their actions. In point of fact the actual cash outlays in a poor's case are so very small that in practice I do not think much trouble arises on this point.

Beyond witnesses' travelling expenses and fees, the expense of citation by messenger at arms, and postages, in the ordinary Poor's Roll case there is little actual outlay required.

I understand that the shorthand reporters of court are in the habit of taking down the evidence in proofs in poor cases gratuitously—though I do not know of any statutory obligation on them to do so. In cases where in ordinary circumstances printed pleadings would be required—defended actions, appeals, &c.—the Court in Poor's Roll cases will dispense with printing and sanction the use of manuscript or typewritten documents. In practice many litigants on the Poor's Roll are quite willing to make contributions towards the expenses of their action beyond the actual cash outlays. They are frequently able and willing to contribute sums ranging from 20*s.* to £5, and I assume that the poor's agent is not prohibited from accepting such voluntary payments though he could not insist upon being paid anything beyond actual out-of-pocket outlays.

(b) *In Divorce Actions generally.*

In *defended* actions of divorce it is practically impossible to estimate or predict the amount of the expenses likely to be incurred. Where, however, an action is likely, or indeed as is often the case, certain, not to be defended it is comparatively easy to estimate the approximate cost to the litigant. By the law of Scotland there must be a proof before a judge in all matrimonial causes, irrespective of whether the case is or is not defended. To predict the cost of the proof is the chief, in most cases the only, difficulty in arriving at an approximate estimate. In the usual case of an undefended divorce (especially if laid on the ground of desertion) the case may be sufficiently established by the evidence of three or four witnesses, and in such a case the proof may not last more than half an hour. From my own experience I calculate that a short undefended divorce case, proved by about three witnesses, whose travelling fares are not heavy, could be quite easily conducted for 35*l.* I have had several judicial accounts for such cases taxed by the auditor "as between party and party" at about that figure. The details in what I consider a typical case are somewhat as follows :—

	£	*s.*	*d.*
Court dues, &c. - - -	1	17	6
Shorthand writer's account -	1	11	6
Witnesses, 3 examined at 1*l.* each (travelling expenses and small fee) - - - - -	3	0	0
Fees to counsel - - -	6	6	0
Writings, various small outlays, and agent's charges - -	21	10	0
	34	5	0

In such a case the summons was drawn by the agent, and merely revised by counsel. The witnesses also were working-class people, living at no great distance from Edinburgh, so that the payment under that head was very moderate. I consider the charges passed in the account were fair, without being very liberal or unduly restricted. The proof in this particular case lasted less than half an hour.

In point of fact, in special circumstances a solicitor might even be able to modify the above scale. In a very simple case of divorce, which I conducted some years ago, where counsel, in very special circumstances, agreed to act for a modified fee of 5*l.* 5*s.*, I find that, exclusive of witnesses' fees, the account came to 21*l.*, outlays in this case amounted to 7*l.* 10*s.* I consider that a case conducted at this rate hardly remunerates counsel or agent for their trouble, and, personally, I would only undertake to restrict my fees to such an extent for some very special reason. I have no doubt, however, that there are lawyers who would be willing to conduct divorces at the above rates. How far such a practice is to be approved of may be a question open to doubt.

Additional Memorandum by Mr. J. B. Lorimer, W.S.

When I had an opportunity on 11th March last of giving evidence before the Commissioners it was suggested by the Chairman that I should endeavour to obtain information as to the proportion of actions for judicial separation in the local sheriff courts which were sued *in formâ pauperis*. In compliance with this suggestion I have prepared from statistics obtained from the officials in various sheriff courts a table showing the total number of cases for judicial separation sued in each court since such actions were made competent in the inferior courts by the Sheriff Court (Scotland) Act, 1907, which came into operation on 1st January 1908. I have subdivided the list of cases into those cases which were sued in ordinary course and those where the applicant had obtained the benefit of the poor's roll and was litigating *in formâ pauperis*. I may explain that I have only obtained statistics applicable to a comparatively small number of sheriff courts. I have selected these as being the courts which afforded the most instructive statistics. Cases of judicial separation are not of very frequent occurrence in rural and agricultural districts, and in many of the smaller sheriff courts there have been no cases of this kind since the Act came into force. The courts

regarding which I have obtained information are those in the more densely populated industrial districts, where actions for judicial separation are more common.

I may explain that I have excluded the Edinburgh district from my statistics on this subject, as in that locality litigants have the choice of raising separation actions in the court of session as well as in the sheriff court. Consequently statistics regarding the Edinburgh sheriff court in this matter are not quite on the same basis as in other localities.

It will be seen from the table hereto appended that of 175 applications for aliment alone, 122 were made by litigants on the poor's roll, and that out of a total of 433 actions of separation and aliment 253 were at the instance of litigants on the poor's roll.

I hope that the Commissioners may find these statistics of some use in giving them a general idea of the extent to which the poor's roll is taken advantage of in actions of this kind in the sheriff court.

List of the Number of Actions for Aliment and of Separation and Aliment raised in the undernoted Sheriff Courts in Scotland, since the Sheriff Courts Act of 1907 *come into operation on* 1*st January* 1908.

Court.	Aliment alone, all at instance of Wife.		Separation and Aliment.				Separation alone.			
			H.		W.		H.		W.	
	O.R.	P.R.	P.R.	O.R.	O.R.	P.R.	O.R.	P.R.	O.R.	P.R.
Aberdeen	2	—	—	3	12	23	—	—	—	—
Dumbarton	—	1	—	—	8	7	—	—	—	—
Dunfermline	—	—	—	—	6	4	—	—	—	—
Dundee	—	—	—	—	7	2	1	—	1	—
Forfar	2	2	—	—	2	2	—	—	—	—
Arbroath	1	1	—	—	1	1	—	—	—	—
Glasgow	41	104	—	—	119	191	2	1	1	1
Hamilton	5	8	—	—	16	19	—	—	—	—
Airdrie	2	6	—	—	6	4	—	—	—	—
	53	122	—	3	177	253	3	1	2	1
	175			433			4		3	

H. = At instance of husband. O.R. = Case sued in ordinary roll.
W. = „ „ wife. P.R. = „ „ Poor's Roll.

Winchester House, St. James's Square, London, S.W.

ELEVENTH DAY.

Monday, 14th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
RUFUS ISAACS, Esq., K.C., M.P. (Solicitor-General).
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. NIGEL C. A. NEVILLE called and examined.

6823. (*Lord Guthrie.*) You are stipendiary magistrate for South Staffordshire?—Yes.

6824. How long have you acted?—24 years or more.

6825. First of all, let me take the question of conferring divorce jurisdiction on local courts. What is your view with regard to that suggestion?—In my opinion it is advisable to do so.

6826. Why?—Because there are some cases in which the poorer classes certainly might obtain divorces only they cannot do it in consequence of the expense of coming up to London.

6827. Have you yourself seen cases where that has been quite clear?—Yes, I have seen some; not many.

6828. Where people had a good cause, and would have come to London if they could have afforded it?—Yes, I think so. They certainly would have wanted a divorce.

6829. Have you considered whether, if local courts were established, the remedy should be confined to the poor, or open to all?—That is a very difficult question, because one does not know quite where "the poor" comes in, and it is rather complicated by the Act of Parliament now, in which the magistrates may grant judicial separa-

tions for one cause for which the Divorce Court cannot, that is, for habitual drunkenness.

6830. But what I meant, Mr. Neville, is, would it only be the poor who would have the right to go to the local court for divorce, or would you draw any line there?—I think there should be some line drawn. I should not think that the county court would be the proper place for the wealthy people to go to; I think they still ought to come to London. But as to how to draw a line is a very difficult matter.

6831. But you think the grievance is in relation to the poor, and therefore the remedy ought to be confined to them?—Quite so.

6832. Have you formed any idea as to how you would define the poor in relation to this matter?—No, I am afraid not.

6833. I mean with regard to the amount of wages; 25*s.* or what?—Oh, no, more than that. You see, the magistrates can now allow up to 40*s.* I think the amount per week should go to 4*l.*

6834. That anybody below 4*l.* a week should be entitled to the remedy you indicate?—Yes.

6835. Now, you have just mentioned the county court. Is it your view that if divorce is to be obtained in a local court, that should be the county court?—I think so, certainly.

6836. As distinct from the justices or the stipendiary magistrates?—Yes, I think so.

6837. Why do you make that distinction?—Well, the magistrate's court has not got quite so much tone about it as the county court has, and I think a matter of divorce is a much more serious thing, and should not be dealt with by what is practically the lowest court we have.

6838. Would you make it available in every county court, or would you select centres, where there was a local bar, say?—I think I should make it available to every county court; otherwise the places where there is not a local bar would not be able to get the redress without the expense of going to the other local court.

6839. Could not you find, except in remote regions, a local bar within, say, 50 miles?—Yes, I should think so.

6840. Do not you think that 50 miles, which involves, say, 10*s.* in the way of railway expenses, would remove the grievance in a great many cases?—You see it is not only the expense of the parties, but it is the expense of taking the witnesses, and I certainly think that it would be better that every county court should have jurisdiction.

6841. Now you have a suggestion as to whether decrees nisi should apply in the case of the county courts. What is your suggestion?—Well, what I suggest is this. Assuming a county court granted a decree nisi not to be made absolute for six months, the same as the Divorce Court does, the difficulty to the parties in that six months would be very great. Of course, if alimony is given during that six months, then the wife would be able to exist, but then the difficulty would be very hard on the husband; he does not know whether he has to break up his home or not, and he has to live that six months in a condition of doubt as to that. In my opinion, if the jurisdiction is transferred to the county court, they have plenty of officers, and knowing people as they do, they would be able to make all necessary inquiries, at any rate within one month. You see, they know the parties; they have the bailiffs and people there; and as soon as the court is over they can say, "John Jones—decree nisi—make inquiries"; and it is done within a week.

6842. But take it as in the case of the High Court; the case of a wife who gets a divorce; although the decree nisi applies, she gets alimony at once; she being the innocent party, I mean. Would not that meet the case sufficiently?—Well, perhaps that would.

6843. If it were so?—Yes.

6844. Now, as to separation orders. How long have you been a stipendiary magistrate for South Staffordshire?—Twenty-four years.

6845. In the last four years about how many separation orders have you granted?—I have made over 200.

6846. Have they varied much as to amount year by year, or are they increasing?—No, I think they have varied very little, indeed.

6847. Although the population has been increasing?—Well, it has been increasing, but not very much.

6848. What is your view with regard to the effect of these, good or bad?——

(*Mr. Brierley.*) Would you tell us what the population is.

6849. (*Lord Guthrie.*) What is the population?—I think it is about 350,000; I will not be quite sure as to that.

6850. Manufacturing and mining?—Yes, colliery and iron works mostly.

6851. And agricultural?—Yes, some, but not very much.

6852. Now, what is your view with regard to the result, as far as these orders are concerned?—In my idea, they have done a very great deal of good in preventing misery. In the whole of these 200, a great many of them came together again; I should say between 70 and 80 of the 200 have gone together again. Some of them go together again within a week. That is accounted for in several ways. One, because the two cannot live so comfortably apart on, say, 10*s.* a week, as they could together on 20*s.* a week; and then the general effect of these orders, in my opinion, is good. It is astonishing the amount of warrants issued for the payment of the money. During that four years I issued 120 warrants; those 120 warrants were against 110 people; some of them had several warrants against them. Out of those 120 warrants there was only imprisonment in 43 cases. The others all paid up what they could.

6853. In those 43 cases, have you any knowledge of whether imprisonment produced payment as a result?—I know it does in some cases; and I know it did in some, but I cannot give the figures of it.

6854. Can you tell us in what number of cases you granted separations, as distinct from those in which you merely made an order for payment?—I do not quite follow.

6855. You told us you have granted separation orders?—Yes.

6856. Now, it is suggested to us that in a number of cases an order for payment should be made without separation. What do you say to that?—I do not know, I am sure. I never thought of that. I do not quite see how that would work if they are living together again.

6857. It has been suggested that to order separation is not a need in a great many of these cases, and that if the wife and children were provided for, the parties would be more ready to come together than if an order of separation had been issued. What do you say to that?—I do not think the order of separation really affects that much. I think they will come together, as they do in many cases, if they think it convenient. No doubt the money is a great inducement for them to come together.

6858. It has been suggested the wife is apt to use the order for separation as a weapon and flourish it in her husband's face. You have not seen any evidence of that?—I never heard anything of that.

6859. Do you find they come to you in some cases on utterly frivolous grounds?—Yes, sometimes. I find during those four years I dismissed 37 cases.

6860. But looking back on it now, you would repeat the orders that you made?—Certainly.

6861. And on the whole you think the effect has been beneficial?—Certainly; very beneficial.

6862. You see, it has been said to us that it leads to immorality, because you have wives who are really practically unmarried, and husbands who are practically unmarried, and they take up with respective partners of the opposite sex. Have you seen evidence of that?—With regard to the man I cannot give any figures. Of course they go away, and if they pay I know nothing about what they do. No doubt when they are arrested and brought before me the man says, "I cannot afford to pay"; and the wife retorts "Oh, "then you should not keep that other woman." And

so I cannot give any cases as to that. As to the wife, I can give pretty satisfactory figures. The wife knows if she is immoral she will lose her money, and the husband knows if he can catch the wife in any immorality he will not have to pay the allowance any more, and will simply apply for the order to be cancelled.

6863. That is a check upon her?—That is a check upon her; and I notice on going through those cases for those four years, though there were 200 orders made, there were only three cases in which the order was cancelled in consequence of the wife's immorality.

6864. Have you seen cases where the wife applied for separation, and you thought if she had been able to afford the expense it would have been a suitable case for divorce?—I have seen a few of those cases; I should not say many; I should say very few.

6865. Now, with regard to reporting the details of the evidence of divorce cases, what is your view on that?—In my opinion they ought not to be reported. I should only put the names of the parties, and just the cause and the result.

6866. Would not you allow the judge's opinion to be printed?—Well, it might be. I do not think I should advise its being printed *in extenso*.

6867. Take the case of a man being charged as co-respondent without any foundation whatever. His character ought to be cleared in some way?—Yes, quite so.

6868. If the evidence is not reported, the other way is for the judge to do it, and for that to be printed. Is not that fair?—I think what I mean would do that. I mean if it was a case of Smith co-respondent, and the report is "Verdict, Smith discharged"; I think that is sufficient.

6869. That might be like our Scotch verdict of "not proven"?—That is true.

6870. Supposing it appears that the charge is utterly groundless—without any foundation, the judge would certainly say so, and that should be printed?—Oh! I do not think there would be any objection to that.

6871. Then the last point you speak to is whether a magisterial order for separation should have the full force of a foundation for desertion in a Divorce Court unless it is appealed from. Why do you refer to that?—That is because of the case of Harriman *v.* Harriman.

6872. 1909 Probate, page 123?—Yes. I think in that case it was a distinct hardship on the woman not being able to get her divorce because she had been to a magistrate and got a separation order; and the court said, as the man was bound to live apart from his wife, that therefore there was not desertion for the two years.

6873. (*Mr. Brierley.*) Just about Harriman *v.* Harriman. Do you think it is really necessary, in these cases where the order is made on the ground of desertion, to have a non-cohabitation clause in the order, or do you think that a mere order for maintenance would be sufficient?—I think you must have some clause such as we have now, simply that the wife is not bound to cohabit any more.

6874. Even in cases of desertion only?—Yes. I am speaking of the magisterial cases. Of course it has been mentioned in this Commission that they are called permanent separation orders. I think that is entirely a mistake.

6875. They are permanent unless by the desire of both parties they become other than permanent?—Yes, but by the desire of both parties thay can become smashed.

6876. Yes, but the difficulty in Harriman *v.* Harriman is, if the non-cohabitation clause is inserted after a month or two months, then it can be said that desertion cannot continue because the husband has not the chance of coming back. Do you think in most cases the non-cohabitation clause is necessary for the protection of the wife. All she is supposed to say is that the husband has left left her against her will?—Yes, if it is a case of desertion.

6877. I am speaking of desertion only at the moment?—Yes. Well, I think in a real case of desertion, when the husband has gone away, then perhaps that clause is not necessary, but in the case of persistent cruelty it most certainly is.

6878. It is only when that clause is inserted that the case of Harriman *v.* Harriman applies?—Yes

6879. Do you think it is necessary in most cases of mere desertion that the non-cohabitation clause should be inserted at all?—If it is mere desertion I do not hink it is so necessary, because the man is not so likely to come back.

6880. And also he ought to have the opportunity of coming back if he wishes; otherwise you give the court of summary jurisdiction greater power than the High Court, where it is only done at the end of two years?—Well, they can go back now.

6881. However, you think there are a certain number of cases where poor people are debarred by their means, and by their means only, from obtaining divorce?—Certainly. I think only a few.

6882. I suppose you would be of opinion that the magisterial jurisdiction is still necessary, even if the county court had jurisdiction?—Oh, I think so. They are accustomed to come to the magistrates for it.

6883. And I suppose there are a large number of women whose object is to obtain alimony and maintenance rather than to break the marriage tie?—Yes; a great many of them would rather have the allowance of money than a divorce and be free to marry again, especially women who have three or four children.

6883*a*. A great many of them would not wish to proceed for divorce?—No.

6884. At all events if it cost them anything serious?—No, I do not think a great many of them would wish it.

6885. There has been a suggestion before the Commission that these orders made by magistrates should be only made for a time (six months has been suggested), that is to say, that there should be almost a probationary order for six months. What do you say about that?—I am against that altogether. I do not quite know what would happen at the end of six months. Would the woman have to go to the magistrate again?

6886. I suppose the suggestion is that the order would drop at the end of the six months unless she applied to have it continued. I think that is the suggestion. What do you think of that?—If there has to be any other proceeding you would want to get the husband somehow or other before you.

6887. I suppose it would be possible to make the fact of the order lasting for only six months operate as a notice to the husband that on that day six months he had to appear again if he wished to object to the order?—It might be done in that way.

6888. And otherwise the order would continue. I understand the suggestion is made with the idea that it would increase the chance of reconciliation between husband and wife?—Yes, well, I do not think so myself. I do not see any benefit in the six months.

6889. Well, I only wanted to know your opinion, as many witnesses have suggested it?—Yes, I have seen it in the reports.

6890. Then you say in your opinion every county court ought to have jurisdiction of divorce, if any have?—I think so.

6891. We understand in some of the small county courts the officers and registrars and so on are somewhat insufficient to deal with these questions of divorce?—I do not know of any county court that has not got sufficient staff.

6892. Do not you think that is a matter that might be left to the county court judge of the district, to decide which court he might exercise the jurisdiction in?—Yes, well it might be done if there are only very small courts.

6893. We understand there are some very small courts?—Well, in the Midlands, they are sufficient.

6894. It might be left to the county court judge or the Lord Chancellor?—I suppose the county court judge would have discretion to adjourn a case from one court to another.

6895. I fancy the difficulty is more with regard to the registry than the actual hearing in court?—Well, most of them have a registrar to each court, and then some assistant registrars, and then high bailiffs and assistant bailiffs.

6896. I think you are speaking of large courts. I think there are courts which have not very large staffs? —Well, I have not come across those.

6897. (*Sir Lewis Dibdin.*) I gather your view is that there is no very great number of cases for divorce amongst the poor which are precluded from being dealt with under the existing system, but there are some?—There are some, but it does not always come out before me; when the application is on the ground of desertion or cruelty, if there is any evidence that can be got to justify a divorce it may not come out before me at all.

6898. As far as you are aware, you would say there is no very great demand for greater divorce facilities? —No, I do not think there is any very great demand.

6899. I think you told us, and in fact you have just repeated it, that so far as the case of separation orders that come before you is concerned, there are not many cases, as far as you know, where divorce might have been claimed if the parties had had the opportunity of doing so?—There are not many.

6900. And I think you say only three cases have come under your knowledge where the maintenance order has been cancelled on account of the wife's misconduct?—Yes, three cases in the four years.

6901. In about 200 cases?—Yes, and that is accurate.

6902. There are about 7,000 separation orders made in the whole of England, I believe, every year. It would not be accurate, then, would it, to regard those as any index of what the number of divorce cases would be if the arrangement was made possible for the poor?—I do not think it would.

6903. Is it your view that it would not be a good thing to make divorce too easy?—Yes, certainly. I am really, personally, against divorce to a great extent, but I am afraid it is a necessity and is wanted for the peace of the world.

6904. But looking at things as a man of the world, and from the point of view of the State, you do not think it is a thing that should be made too easy?—No, I do not.

6905. Is your view as to the county court adopted because you feel there must be some local tribunal or because you think that is the best imaginable?—It is because I think there must be some local tribunal, and I think the county court fits in better than any other.

6906. Have you had under your notice the suggestion by Mr. Justice Bargrave Deane a week or two ago that one of the regular divorce judges—if necessary an additional judge, but of that division—should be sent down regularly from time to time to try local case?—I do not think that would be so convenient, because I take it that judge would only come down at certain times, and you would have to have your case delayed. If he had a sort of circuit—say, once in three months—he would not be likely to come down oftener than that.

6907. To any particular place?—Yes; and the county court is there all the time. You can go and take out your summons in the county court at any time, and get it over quickly, except in the vacation time.

6908. Do not you think, in your experience of the poor people for separation orders, that a little delay is sometimes a good thing?—I do not think so.

6909. Are not they rather apt to quarrel and apply in a passion?—A few perhaps may do, but they would very soon come together again.

6910. But do not you think if the divorce court of the district was always open every day, that the hasty applications that are made to you now for separation would be made to the county court judge for divorce? —I do not think they would.

6911. What I suggest to you would be one advanage of Mr. Justice Bargrave Deane's proposal, is that it would leave the question of divorce jurisdiction on an important level?—I quite agree with that.

6912. Rather than make it an every-day occurrence, like the recovery of small debts?—I quite agree with that.

6913. That would be an advantage?—Yes.

6914. I gather you think that suggestion is at any rate worth consideration?—Yes.

6915. (*The Earl of Derby.*) I should like to ask you one or two questions. You say, as far as you know, there is no very great demand for greater facilities for divorce amongst the poorer classes?—There is no great demand, but there is a certain demand, and because they cannot get it there is a sense of injustice.

6916. Now you have mentioned that you have given 200 separation orders. We have had it on evidence that a divorce case, undefended, will cost 40*l.* to 50*l.* Now, of those applicants for separation orders, how many do you think could have afforded that sum if they had wanted a divorce?—I should think, perhaps, only two or three, and those would be cases under the Habitual Drunkards' Act, because they have plenty of money; those are not our ordinary cases. I had a case the other day where a man was getting 20*l.* a week and an order was made, and I am glad to say they went together again within a week.

6917. Two or three out of 200; that might mean 197 went for a separation order because they knew that the expense of a divorce which they might have been able to obtain was beyond their means?—But out of the 200 orders I should very much doubt if more than 10 could have got divorces; but in none of those cases (I do not think a single one, except the case under the Habitual Drunkards' Act) could they have found the money to get a divorce, even 20*l.*

6918. You say those would not have been able to get a divorce; why not?—They could not have afforded the money.

6919. I thought you meant there were other reasons beyond pecuniary means that would prevent their getting a divorce?—Yes, I say I should not think more than 10 out of the 200 would have obtained a divorce if they had had the money.

6920. Why not?—Because the offence would not have justified a divorce under the present law of divorce. Simple desertion or cruelty you could not get a divorce for under the present law. Of course, I know suggestions are being made that that should be increased.

6921. But in cases like that they do not bring the fact of there being adultery before you, do they?— Sometimes not; sometimes it comes out.

6922. In many of these cases there may have been adultery which was not mentioned?—In most of the cases it is either desertion or cruelty, and nothing is said about adultery.

6923. But in each of those cases it might have been accompanied by adultery, without that fact being brought to notice?—It might have been, yes; but the fact would generally get blurted out.

6924. One of the objections urged against the county court being a tribunal is, that there would be so many opportunities for collusion, and that the King's Proctor would not have the opportunity of seeing that everything was in order; but you would get rid of that by making the decree nisi absolute simultaneously, practically?—Well, I think a month would be quite sufficient in the county courts; the county court officials, at any rate in the populous districts, could put their hands on the cases, and get a report within a week practically.

6925. Then, practically the county court judge would be acting not only in a judicial capacity in divorce cases, but also as King's Proctor?—Well, his registrars, or high bailiffs, or somebody would.

6926. You would not refer these cases to London at all, to the King's Proctor?—I should not, on the ground of expense.

6927. Except in cases of grave doubt?—I do not think I should refer those cases from the county courts at all to London.

6928. Then that objection to the King's Proctor not having proper control over these courts, would be obviated?—Yes, I should leave that to the registrars or officers of the court.

6929. Now, you say in four years you issued 120 warrants for arrest. That is for not paying the allowance you ordered?—Yes, quite so.

6930. The allowance at the present moment is paid direct to the woman, is it not?—Yes.

6931. Do you think any of the difficulties would be obviated if, instead of paying it direct to the woman, it was paid into court, and the woman drew it from the court?—No, I do not think that would have any beneficial effect.

6932. You do not think the men would be more likely to pay into the court from which the direct order emanated, than pay direct to the woman?—I do ot think that would have any effect at all on the men, and the women can make inquiry as to where their husbands are better than the official of the court could.

6933. With regard to separations; I want to ask you this. Are you of opinion that desertion should, of itself, afford ground for divorce?—Well, I am not, unless it is desertion for a long period. There are, no doubt, some cases where the man leaves the country and goes away and sets up another establishment. Then, of course, you would get the adultery; but mere desertion, I do not think I should say I am in favour of divorce for.

6934. I am thinking of the class who come to you for separation orders. I think you will agree with me that, supposing a husband left a wife and went off to the Colonies, that it would be entirely beyond the means of that woman to make inquiries in the Colonies, and find out what her husband was doing?—Yes, where a man goes abroad, I think desertion under those circumstances might, perhaps, be a ground for divorce, because there would be no chance of the woman ever getting anything from him.

6935. If the woman showed that the inference was that her husband had gone away with no intention to return, you would be prepared to say that made a ground of divorce?—I think it might be. It would want rather careful hedging round.

6936. One more question with regard to separation orders. You object to a separation order being made temporary?—I do not like that; I would rather have the separation order as it is now. It is temporary if they choose to come together.

6937. But supposing it was made that it was renewable at the end of a year, and then afterwards at the end of each six months, and if at the end of a third application both parties agreed to its being continued, that then either party should have the right of having it made a decree of divorce. Would you agree to that?—I do not think I should; I would rather leave the separation as it is now.

6938. You would sooner see two people permanently separated and yet married than dissolve the marriage tie and let each of them marry again, with the chance of a happier home?—Well, as I said just now, I am rather against divorce, and I do not like, myself, to loosen the tie simply for desertion.

6939. Then with regard to the two sexes. Adultery being a cause for divorce, would you put a woman on exactly the same level as a man with regard to that?—Yes, I think I should.

6940. (*Lord Guthrie.*) Mr. Neville, you said you were rather against divorce on the whole. Is that on the ground of public policy or scriptural grounds?—Well, on scriptural grounds.

6941. It has been suggested that magistrates should do more in the way of attempts at reconciliation before granting orders. What is your practice?—You see, I never see the parties at all until they come into court. In court I do try, but I do not think it is very often successful, or that you can do anything satisfactory in the way of reconciliation then. But we always have in our court a police court missioner, and if I see him there I sometimes make the remark that they ought to live together again. I look at him; I do not say anything, and then I adjourn the case for half an hour, and he goes and has a talk to them, and that often does good. The police court missioner can do it better than the magistrate can; he understands how to talk to them, and he is a very great institution.

6942. Do you find that drunkenness has an intimate relation to the cases?—Oh, yes; drunkenness has something to do with the cases of persistent cruelty.

6943. Both cruelty and desertion, or especially cruelty?—Principally in the cruelty cases; a man gets drunk and thrashes his wife.

6944. (*Mrs. Tennant.*) I am sorry I did not ask you in order, but I was not here at the beginning of your evidence. I want to ask you a question about the class of cases you have who apply for separations. Can you distinguish in numbers between those who apply on the ground of desertion and those on the ground of persistent cruelty?—I could have done, but I am sorry to say I did not do so.

6945. Can you say roughly whether a considerable number of them is in respect of cruelty?—There are more, I should say, certainly of desertion, but not many more.

6946. (*Lord Guthrie.*) You could send the secretary that, could you not?—Yes, I could.

6947. (*Mrs. Tennant.*) My interest is aroused by some answers you gave Lord Derby on the questions that were put as to the desirability of the payment being made to a third person, possibly to an official of the court, rather than to the woman herself. Do not you think it is undesirable, if the husband neglects the payment of the order, that in a case of cruelty the woman, in order to get her maintenance, should have to face the man of whom she was in such fear that she asked to be separated from him?—I do not think that has ever had any bad effect; I have never heard of any disturbance caused at the time of paying over the money. As a rule they do not hand it over personally; he generally sends it by somebody, or in many cases sends it by postal orders.

6948. I am thinking of the case in which he has not sent it, and the wife has to pursue him in order to get it. In those cases might it not be that there would be no disturbance because she left the man altogether, and did not face the husband of whom she was afraid?—I do not think they do; they do not have so much to do with those cases; she would apply to the magistrate's clerk for a warrant; that would be done, and the man is arrested and brought into court. Sometimes they pay considerable sums all at once then, or the case can be adjourned and he pays it when he comes up, say at the end of a month, or something like that. In those cases the money is frequently paid in the court.

6949. But you say in your proof that the wife hesitates to enforce payment by that method because she realises if her husband is in prison he cannot contribute towards her maintenance. I do not want to press it, but it is within my experience that wives do hesitate to apply to husbands who have been brutal to them?—I have not found that so in my experience.

6950. (*Sir George White.*) May I just ask a question my Lord. I have not had the advantage of hearing your evidence, but you say here you have granted over 200 orders in four years. What is the population in your jurisdiction?—About 350,000.

6951. Then you have issued over 120 warrants of arrest. That is to say 120 of the 200 did not voluntarily pay under the orders of the court?—Did not pay to begin with, until there was a warrant. Altogether there were only 43 commitments to prison. There were only 43 who did not pay.

6952. Well, it seemed to me a large proportion—120 out of 200. (*Mr. Brierley.*) It was 110 cases?—Yes, 110 men.

6953. Out of 200?—Yes; and only 43 of those did not pay.

The following has been forwarded by Mr. Neville as a supplement to his evidence.

Stipendiary Magistrate's Office,
Wolverhampton,
16th March 1910.

DEAR SIR,

ON Monday I promised to supply to the Commission, in answer to a question by Mrs. Tennant, particulars of the causes of the separation orders made by me in 1906, 1907, 1908, and 1909, as to the number of cases in which desertion was the cause, and the number in which cruelty was the cause. The table below gives the causes in all the cases before me during those years

The extraordinary decrease in 1909, I hope, shows that matrimonial felicity is increasing in South Staffordshire.

Causes.	Desertion.	Persistent Cruelty.	Neglect to provide Maintenance, &c.	Aggravated Assault.	Habitual Drunkard.	Total.
1906	26	18	5	2	1	52
1907	24	22	5	0	2	53
1908	36	24	4	0	3	67
1909	18	7	6	0	3	34
Total	104	71	20	2	9	206

Yours faithfully,
NIGEL C. A. NEVILLE,
Stipendiary Magistrate.

H. Gorrell Barnes, Esq.,
Secretary, Royal Commission on Divorce.

Mr. C. M. ATKINSON called and examined.

6954. (*Lord Guthrie.*) Are you one of the stipendiary magistrates in Leeds?—Yes.

6955. How long have you been so?—Between 15 and 16 years.

6956. Under the Summary Jurisdiction Act of 1895 how many cases have you disposed of?—Between two and three thousand, I suppose: disposed of in court.

6957. You have heard also a considerable number of applications which have not resulted in a trial?—Those that have not resulted in any trial far exceed in number those that have.

6958. In how many of those have you granted separations, or what proportion have failed?—I have the figures here; the simpler plan would be to hand them in. I think the proportion is very much the same. If you take the first year, there were 197 summonses; that is to say, applications heard in court, and 142 orders made. In the last year, 1909, there were 354 applications heard in court and 288 orders made. Roughly speaking, the proportion does not vary very much between the number of summonses actually heard and the number of orders actually made.

6959. Has the number each year been increasing, or does it remain fairly stationary?—It has varied. It is not so high now as it was in 1903 and 1904, despite the large increase of population.

6960. What is your population?—Nearly half a million.

6961. And is it rapidly increasing?—It has been rapidly increasing the last 20 years.

6962. So that in proportion to the increase of population the number of separations are going down?—Undoubtedly. They reached a climax in 1903.

6963. Was there any special cause then?—I think not, except that a large number of married women had already obtained orders. A large number of the people who were likely to apply for orders had already got them.

6964. We have had in Scotland some suggestions that the Boer war had an effect in such matters. Did you see any sign?—Undoubtedly. One does not care to refer to it, but the necessary separations for years had a very marked effect. Up to 1903 and 1904, and even up to 1905, numbers of persons had been by force of circumstances separated from their spouses, and had established themselves elsewhere.

6965. What is your view as to the result in the way of morality to the people by these orders?—The morality of the married people only?

6966. Yes—as the result of separations; do they do good or evil?—I think a separation order is very frequently followed by open immorality on the part of the man, but I do not think it fair to attribute that only to the operation of the order, because there was, by hypothesis, separation before. I think it important to bear in mind that the applications made to us are applications made by wives and not applications by husbands, except those under the Licensing Act of 1902, which are so few in number that they may be disregarded. Therefore practically all the applications are by women, and they must in all cases, with the exception to which I have referred, be made with regard to persons who are already separated. Unless there be a conviction for aggravated assault, the wife is either deserted by her husband or she has been compelled to leave him and live apart from him by reason of his wilful neglect or cruelty; so that we have the separation before we make the order. I think that is an important fact to remember.

6967. Then, as far as the separations granted to wives go, you think it has been warranted in the case of cruelty and desertion?—Under the Act of 1895?

6968. Yes?—That seems to assume that there was no such remedy in existence before 1895?

6969. Well, taking the law as it is, do you think on the whole it has worked well for the good of the community?—I think, undoubtedly. It has served to check, to some extent, brutal husbands; and though it has induced persons to ask for separation on the ground of slight domestic squabbles which ought never to have been brought before the public at all, yet the wives who are separated have the strongest possible incentive to remain virtuous, because if there occurs any lapse on their part they lose the custody of the children, which is generally to them one of the most important factors in the case, and they also lose the alimony which is vital to their existence. Therefore they have the strongest possible incentive to remain pure, whatever their husbands may do.

6970. In how many cases would you say the order has been cancelled through evidence that the wife has lapsed?—I have not got the figures, but I should have thought, myself, in three or four per cent. of the cases. That is my impression.

6971. In the evidence that comes before you, does the evidence of adultery come out at all?—The application being always made by the wife and not by the husband, of course it does not come out as much as one might suppose, off-hand. The wife herself has no chance of an order if she has committed adultery. We have the power, of course, to investigate as to whether it was conduced to by the conduct of the husband and that kind of thing, but I do not think one wife in five hundred knows of that; and if she has committed adultery she rarely thinks of applying for an order.

6972. Then you cannot tell in what proportion of cases a remedy could have been sought by these people by way of divorce in the High Court?—I should have thought the wife would hardly ever obtain a decree of dissolution in the High Court, because even if there is adultery, there is hardly ever desertion for two years. But she is bound to come as soon as she can to the police court to get something to live upon.

6973. You refer to cases where the husband is the complainant. What do you say about these?—These are very rare. It is only when the wife is an habitual drunkard, and they have only been in existence since 1902. Indeed, in the course of the seven years at Leeds, there have been only 29 cases under the Act, and some of those have been brought by the wife.

6974. Are they necessary or not?—I think not, so far as applications by the husband are concerned.

6975. What is your view as to opening the remedy of divorce wider for the poor?—You mean allowing divorce on grounds which would not——

6976. No, making it cheaper; more available for the poor people?—I think divorce should be made cheaper, but not easier, if I may say so. I mean that no person—man or woman—should be debarred from obtaining an order by reason only of lack of funds.

6977. Then have you seen cases where you thought that if the people had had the money they would have applied for and would have obtained divorce?—Undoubtedly. Very few cases have come before me in open court, but a considerable number of cases—not very many—a considerable number in one's private room; especially on the part of men who are seeking to establish themselves and are unable to get a respectable housekeeper, because of the stain on the reputation that might attach.

6978. In the case of a poor man, is it your experience that he must have, if he has children, some woman when his wife has left him to look after the house, and in that case is there very apt to be established immoral relations?—Unless he has a daughter over 13 or 14, I think it is almost essential; and often if he does not get such a woman, it results in his finding himself in difficulties with the societies who protect children.

6979. Then suppose you have the case of the wife whose husband has left her with young children and there is adultery on his part and also desertion, but she cannot get divorce from lack of funds. In that case is she exposed to great temptation?—Undoubtedly—I think she is.

6980. A wife and yet in the position of an unmarried woman and unable to marry?—I think of necessity that is so. I cannot say I have very much evidence before me in court as to the degree of temptation, but of course one knows such women are placed in dire straits, and it is a question between the workhouse and a wanton life, or something of the kind if they cannot get work.

6981. We have had a difference of opinion as to whether there are a substantial number of such cases; everybody admits there are some. Do you think there are a substantial number of poor people who would go for a divorce and are entitled to have it but for the lack of funds?—It is a mere guess, but I suppose that, in the course of the year, there may be 10 or 20 in a place with the population of Leeds—half a million. I am judging by the complaints made; scores of people come into one's room every morning and tell the story of their lives without wanting any particular advice, and I am judging from that.

6982. Have you formed any opinion as to what should be considered a poor person?—I should have thought, for the purpose of free divorce, a person who could satisfy the court that he or she was not worth 100*l.* I only judge from what I am told as to the costs of divorce proceedings. I think such costs are assessed at an amount which would otherwise exclude the remedy.

6983. Would you fix it by amount of capital or wages?—My idea was to fix it by the amount of capital. I understand that was the method adopted in cases of suing *in formâ pauperis*.

6984. We have had it suggested that if it is by wages it might be a limit of, say, 4*l.*?—4*l.* per week.

6985. Yes. Does that seem to you high, or what?—Well, I find it so very difficult to ascertain what the wages are. It all depends which side people are on as to what they represent their wages to be. If the wife is seeking a separation order, the husband generally represents that his wages are very inadequate.

6986. Now, if there is to be any change in the way of conferring jurisdiction on local courts, what do you say as to the local courts?—That is on the assumption that the cases should be tried in the local courts?

6987. Yes?—Well, I certainly say it should not be the police courts, and there is only one other local court. But that is making the wide assumption that they should be tried there.

6988. Then, if it is not the police court, what about the stipendiary magistrates, or the county court?—I was including the stipendiary magistrates in the police courts.

6989. And that would reduce you to the county court?—Yes.

6990. Do you see any reason why the county court should not have jurisdiction in divorce?—I think it is a very serious step to bring about—a devolution of that kind. Besides, I think there are strong reasons for retaining the jurisdiction solely in the High Court, subject to a scheme to enable the poor to obtain relief there. I think those who have special training in the law of divorce and have had long experience of its intricacies and practice should alone dispose of matters, I mean finally dispose of matters, of that kind.

6991. I see you indicate that, if the county courts had jurisdiction, there would be a want of uniformity in decisions. Do you attach importance to that?—I attach the greatest importance to that. In one court it might be very easy to get divorce, and in another extremely difficult, and people would soon find out the courts in which it would be discreet to file a petition.

6992. But such questions are just questions of fact, are they not?—But they are extremely difficult questions of fact, and, indeed, I do not see how you can distinguish fact from law, because so much depends on the practice as laid down by the judges in the Divorce Court during the last 50 years. A common case would be, a wife would claim relief, and the husband would say, "But you have been guilty of misconduct," and she would say, "Yes, but it is my husband's fault that "I have been led into this." Well, I say that raises an extremely difficult question, and, from experience, I know how difficult it is for those who are not familiar with that class of case. We read, with the greatest care, the judgments before us. There is one that Lord Gorell will remember—Burdon *v.* Burdon; and we act on those judgments as well as we can, but it is not at all easy.

6993. And often the difficulty is, what is the legal inference from the facts?—Yes, and my suggestion would be that the county courts should find certain issues of fact—if there is to be any alteration—and the judges of the High Court pronounce upon the findings.

6994. By either going on circuit or in London?—Well, if by affidavit, which would only cost a few shillings, the petitioner could satisfy the Registrar of the Divorce Court that there was *primâ facie* ground for assistance, establishing further the fact of poverty, I would suggest that then the Registrar should have power to direct the pleadings in the matter to proceed in the local district registry without fees; that is to say, that the petition should be filed there, the citation being served and the interlocutory proceedings continuing in the district registry without fee; and that then, when the pleadings were complete, that the file should be submitted to the judge of the Divorce Court, and that he should then say aye or no, whether the case should go to the county court; and, if he thought it was a case for the county court, that then he should define the issues for the county court judge to find, and afterwards when he got those issues found, he could say if it was a proper case for a divorce. To my mind, that would keep the control where it should be.

6995. Then, in that case, you would only have the evidence led in the county court where the judge of the High Court thought suitable?—Yes, and I say that because I am satisfied that, in nine cases out of ten, the cases would be undefended, and it would appear, on the pleadings, before the High Court judge that it would be an undefended case.

6996. Would not the great objection be, that the judge of the High Court would not see the witnesses?—It would, but I suppose the judge in the High Court would decide on the facts as found in the court below,

and I think this scheme would be a check on the want of uniformity.

6997. He could decide the issue of fact?—The county court judge would find whether A. had committed misconduct with B., and find whether it was condoned or conduced to, and on those findings it would be better for the High Court judge to say what should happen, and I should think there would be very slight difficulty in his doing so.

6998. But in the ordinary case that would be to give the judgment to the county court judge except where there was any great difficulty of law?—And rightly so, in the undefended cases, which I take it would be far the most numerous. They would simply come before him on questions of fact, and it would be like sending issues to be found by a referee.

6999. In what proportion do you have the parties acting, and in what proportion do solicitors appear before you?—Well, in very many cases there is a solicitor on one side only, and that is one of the great difficulties of working an Act of this kind. One of the parties is represented by a solicitor of skill and experience, while the other party has no knowledge of the nature of the issue, and therefore does not know what kind of evidence to bring forward. In these cases under the Summary Jurisdiction (Married Women's) Act we have constantly to consider whether a man has been guilty of adultery without his knowing anything about the case. He is not cited, and cannot be cited, and we have to decide aye or no whether he has committed adultery, while all he knows about it may be from some of his friends who were sitting in the gallery listening to his condemnation. We have no power to bring him before us unless the solicitor calls him.

7000. Then you think both parties should be represented by solicitor or counsel?—I had not thought of it from that point of view, but I should say offhand, yes, for the purpose of bringing out the facts.

7001. If the county courts obtained jurisdiction would it be very important from your point of view to have, as we do in Scotland, solicitors appointed to act on both sides where the parties are poor?—Undoubtedly I think so.

7002. We have them tried in Edinburgh, and in every case we have counsel and solicitors on both sides. Do you think that very conducive to a just result?—Undoubtedly, and it would be an infinite saving of time and labour for the learned judge in the county court.

7003. Then you refer to the question of the difficulty in recovering the arrears of alimony. Will you explain that?—It is partly with regard to the time. A grave defect in the Act, I think, is that a wife cannot recover what is granted to her for a calendar month after the making of the order. That is to say, by hypothesis she is deserted, and by hypothesis she has to support her children, if she has the custody of them, and yet for a calendar month she cannot move a hand-stir to recover what she is entitled to. The man scoffs at the idea of making any payment, and after three weeks or so says, "I am off," and he is indeed off, and has to be brought back at the public expense, if at all.

7004. What remedy would you suggest for that?—I would suggest making the order enforceable from the moment it is made—operative at once. She often cannot even borrow enough from her friends to enable her to subsist during the months she has to live where and how she may without her husband. Before the Act came into operation the usual procedure was for her to go to the guardians and get relief, and they applied under the Poor Law Amendment Act of 1867 for an order for maintenance; but now they say, naturally, "This is a case for the magistrate; you must "go to him," and she goes, with the result that it is generally five weeks before she can put the order into force: before she gets any payment.

7005. Just two suggestions. It has been suggested that there are many cases where separation orders are granted when all that is wanted is a maintenance order. What do you say to that?—I should say in a very large number of cases, and in most cases, it is a separation order that is granted. But, at the same time, I think a great confusion has arisen through the word "separation" being applied in cases of mere maintenance orders such as were obtained under the Poor Law Amendment Act, and the Matrimonial Causes (Amendment) Act of 1886—mere maintenance orders, not separation. That is in effect: You are living apart from your wife, but you must keep her.

7006. Is it not a fact that under the 1895 Act separation orders are granted, and that it is found after a few days people come together again?—Constantly.

7007. Seeming to show that no separation should have been granted?—It is very frequent in Leeds for women to apply who have already had three separation orders.

7008. Does that point to this, that no separation order should have been granted, but only a maintenance order?—Well, we have granted a maintenance order if the wife's safety is not in jeopardy. If there is physical disability, or she is in jeopardy, then we think it right to grant a separation order. We understand that to be in accordance with the decision in Harriman *v.* Harriman. We understand that we act without jurisdiction if we give a separation order ——

7009. (*Chairman.*) That I think is not the decision. You still have discretion to do it, but the point that was made long ago was that the magistrates in cases where it was not necessary to give separation, should only give maintenance, but they filled up the whole order. Those who have done that have watched it since?—It was stated in some of the books that there was no power to grant a maintenance order without a separation order, and that led to a large number of separation orders being made unnecessarily.

7010. (*Lord Guthrie.*) Your view is that the separation order should be granted only in cases of cruelty, not desertion?—That is my view.

7011. Then what about the orders for separation being made temporary?—I think that would cause endless work to the court, and would not have any corresponding advantage, seeing that the average time they live apart is so short. The whole period of separation is often only three weeks. And it is for this reason that the woman is thrown back upon the man. She cannot, during that period, enforce help from her husband, so she says: "Are you going to take me back?" and he says "Yes," because he knows the order then goes by the board. (*The following is the table referred to and handed in by the witness*).

CITY OF LEEDS.

Summary Jurisdiction (Married Women) Act, 1895.

Return for each year from 1896 to 1909, extracted from the Chief Constable's statistics (published annually).

Particulars.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
Number of summonses issued on applications for orders.	197	242	217	241	289	349	398	444	424	422	431	339	375	354
Number of orders made	142	184	163	200	221	264	318	344	324	338	329	268	315	288

In addition to the above, the Licensing Act, 1902, enables the court to make orders on the ground of habitual drunkenness. That Act came into operation on 1st January 1903. Under the provisions of that Act 29 applications have been made, and 16 orders have been granted (up to 31st December 1909).

7012. (*Sir George White.*) You have formed very strong views apparently with regard to the question of alimony. Are you of opinion that the arrears should be wiped off by imprisonment?—Well, I think the woman would be no better off if they were not wiped off. She would never get them. If a man will suffer a month's imprisonment for a pound or so, the mere leaving the debt valid would be no use to the wife, she would never get the money.

7013. Then your alteration would be simply that the wife should come into the payment at once?—She should be able to enforce her order after the first week by taking out a warrant, and by having the man arrested and dealt with.

7014. You say you have had from 2,000 to 3,000 cases in your court. I do not know how many years that is in?—Since the Act came into operation in 1895.

7015. Then you are of opinion that whilst the county court is not a proper court to have jurisdiction for this purpose, still it is desirable that the working classes, who are prevented from getting divorce solely by reason of expense, should be able to obtain it. In what way is the difficulty met if you do not take such a course as the county court being empowered?—I think it has been met in Scotland so far as I know. I speak entirely from rumour.

7016. Yes, we have had very interesting evidence about Scotland, but do you think that would be applicable to England—to have a poor man's roll and a poor man's agent in all the districts of England?—Well, a poor man can be defended free, which he could not be 10 years ago, and I should have thought if money can be found to defend a man, money could be found to defend a woman's honour. I do not see any objection to the State finding money in such circumstances.

7017. I want to know whether you think such a system should be adopted in England?—I should think so, but I am afraid my opinion is of very little value. I only look at it from one point of view, which is, of necessity, a narrow one.

7018. Of course you have police court missioners attached to your court?—We had till the Probation of Offenders Act, and now we have probation officers; the police court missioner was appointed probation officer under the Act.

7019. Do you find they can often bring parties together?—Undoubtedly. It would be almost impossible to work the police court without them so far as I can see.

7020. (*The Earl of Derby,*) I want to ask you the same questions as I asked the last witness. You have disposed of between some 2,000 and 3,000 separation order cases?—Yes.

7021. Assuming they had grounds for divorce, and that the cost of a divorce is between 40*l.* and 55*l.*, how many do you think of those could have afforded such a sum for a divorce?—The application you see is always made by the wife, and she very rarely has any money at all.

7022. But where she would be able to get security from the husband?—In how many cases would a husband be in a position to give security?

7023. Yes?—At the most one case in 20, or probably only one in 50 is nearer the mark.

7024. Then the rest of the cases, still supposing there were grounds for divorce, would have been debarred from obtaining divorce on the ground of expense?—Undoubtedly.

7025. You said you did not think in many of those cases it would have been possible for a woman to get a divorce on the ground that her husband had not deserted her for two years?—Yes.

7026. But I think you must have forgotten that a woman can get a divorce for adultery coupled with cruelty?—Oh, yes; I was only dealing with one particular class of cases. No doubt she could obtain a divorce on the ground of cruelty, but what I meant to say was that, in the cases where the woman charges her husband with cruelty, we do not go into the question of adultery, and if it is mentioned we generally say "If you have established cruelty, why "need you say anything more?"

7027. But that was not exactly what you said. You said they would not be able to get a divorce because the husband would not have deserted his wife for two years?—I had in my mind then only the particular class of cases based upon desertion. The correction which your Lordship has been good enough to make, puts the matter on a much more satisfactory basis, because there are, probably, a large number of cases where there is adultery coupled with cruelty, though we have not before us evidence of the adultery.

7028. Can you give us the proportion that cruelty bears to desertion in those two or three thousand cases?—I am afraid I cannot, because it has been the common practice, rightly or wrongly, to prefer two or three different charges in one summons, and it is impossible, therefore, to distinguish. I do not know whether it has been a right practice, but it certainly has been the practice to charge cruelty and wilful neglect, and so on.

7029. But as a matter of fact, you say half these cases where the ground for divorce on the part of a woman as against her husband would be adultery coupled with cruelty—at all events, you say, in half the cases one of those grounds would be cruelty?—Yes.

7030. Now you say you do not know in those cruelty cases how many have adultery coupled with the cruelty?—No, we have no means of judging that; it is not necessary for us to inquire.

7031. Do you find, as the last witness says, that it is often blurted out, or that it comes out, that the man is living with another woman?—Yes, undoubtedly it is constantly stated, and it is, I must say, as constantly denied.

7032. But out of 2,000 or 3,000 cases there are many cases where the woman would be able to charge and prove her husband guilty of cruelty and adultery, and yet she cannot get a divorce on the ground of expense?—I certainly believe that to be so in view of the cases on which one has opportunity to form a judgment—cases of alleged adultery or cases where a woman comes to seek arrears of alimony, and the husband says: "Oh, no, you have committed adultery, "you cannot recover it." The magistrate may then say, "If she has, it is entirely owing to your miscon- "duct in not paying the alimony; you have left her "in the lurch and it is your fault;" but we cannot help it and the order must go by the board. I should suggest, if I had any power to alter the law, that it should not be a sufficient answer, that the wife had committed adultery after the making of the order, if such adultery was brought about entirely by the husband's misconduct.

7033. Now, you said you were opposed to temporary separation orders, because people came together again after three weeks, I think you said, very often?—Yes; but that three weeks was simply in relation to the month——

7034. Oh, yes; I did not mean any particular time; but supposing they did not come together, and at the end of a year or two years the woman made application which was not opposed, or that the husband made application which was not opposed, that this practically permanent separation should become a divorce?—That opens up a very wide question of public policy on which I think my opinion is not of the smallest value; but I should say the great danger lurking in a suggestion of that kind would be, that it is so difficult to ascertain if there is any collusion—how the severance had come about, or what had happened in the meantime.

7035. From the public point of view, do you think there is any great advantage in keeping two people permanently separated and yet married, rather than if they are never coming together again, letting them get their freedom, and perhaps each marry happily?—I think it would be very harmful for it to be known that a wife could go and live with another man and the man with another woman, and after two years the pair could come and say, "We want a divorce," in circumstances which would make it impossible for the magistrate to know anything about what had taken place unless the parties chose to tell him.

7036. One other question as to your opinion. Are you in favour of putting men and women on terms of equality with regard to obtaining divorce, say, for adultery?—That is a more difficult question even than the last one. Of course, the character of my experience hardly qualifies me to express any general opinion on a subject of that kind, though I think the law should not be rendered more elastic except for very grave reasons; I should, if necessary, be prepared to submit considerations against the proposals, and I should also be prepared to maintain that, if there is to be relaxation, it ought to be not only on the grounds your Lordship suggests, but on other grounds, such as long imprisonment, for instance. You mean on the ground of misconduct only?

7037. On the ground of adultery only. Are you prepared to see men and women put on terms of equality—as a matter of opinion? Perhaps you would rather not express your opinion?—If I may limit my answer by saying I am only forming my opinion on the materials before me which may lead to a wrong view if applied to the country at large, I should say this, that my experience is that there is no demand for divorce on the ground of a single act of adultery, and that the wife is only too anxious to get the man back again. Wives come to me and say the husband is living with another woman: "What am I to do?" At her request I send for him or do something to try and get him back. She never says, "Oh, can I get "a divorce?".

7038. The inference is that she would very rarely use it?—Yes, in that particular class.

7039. But are you prepared to give her the power?—I would not be prepared to make a radical alteration of that kind unless I thought she wanted the power. Moreover, the opportunities for collusion would be so easy if it were known that a wife could get a divorce on that ground only; it would enable her to get a divorce at her pleasure. All the husband would have to do would be to walk into the street, followed by a private detective, speak to a woman, and go with the woman to a house of ill fame, stay an hour there, and come out. The case would, then, be complete, though there might, in very truth, be no ground for divorce.

7040. Well, the reverse of that case might exist at the present moment. A man might make such an arrangement with the wife?—But the wife would be exposing herself to much greater indignity and danger. It would not be so serious for him as for her.

7041. Well, I will not press it as it is only a matter of impression. You consider where the inference is that the husband has deserted his wife with no intention of returning, that that should be a ground for divorce?—If one made any alteration in the law of divorce at all, I should certainly make that a ground for divorce.

7042. (*The Archbishop of York.*) You said in your proof, I think, that you thought it was very doubtful whether adultery was in any way attributable to the granting of separation orders. Would you say the class you had to deal with mainly with regard to these separation orders was a class in which matrimonial obligations were very lightly regarded?—I fear that strikes at the root of the evil. I think we are discussing rather the fringe of a great problem, not the problem itself. I judge of that not only on what I hear in separation order cases, but also by the disclosures in affiliation cases. I have heard more than 1,000 of those applications, and have granted orders in scores of cases to girls between 16 and 18; but instead of applying, in scores of cases the parties have got married, and in a loveless marriage like that there can only ensue what follows in these cases, namely, an application for a separation order.

7043. The Chairman suggests I should ask you if you have any remedy to suggest for that particular difficulty?—I should have thought it might be possible to prohibit the marriage of children of 18 or 19. I will take the last three cases I have tried, because they are not, and cannot have been, selected. One was an affiliation case, in which the girl was only 16 years and 3 months old; and the second case was an application for separation where the wife was 18, and the husband 18; and the third case was for arrears of alimony where the woman was 23, and she had already had three separation orders. I mention this because those are the last three cases before me, and have not been selected.

7044. Would you say a great deal of the matrimonial discomfort which brings persons into your court is due to these early indiscreet and thoughtless marriages?—I believe that to be the main factor in the situation.

7045. You would say, would you not, that in a great many cases they settle down and forgive one another a good deal of mutual misconduct?—Undoubtedly, but still I know many cases where, though they settled down, the pair never had the mutual regard for each other which is supposed to be necessary to the formation of the contract of marriage. They, not infrequently, quarrel and separate within three days, and are with their respective parents within a week of the ceremony.

7046. And they come together again?—Sometimes.

7047. At different intervals?—At varying intervals. The wife will come for a separation order when she is hard pressed and cannot support herself.

7408. But when they come for a separation order, and you grant it, is it your experience that in any large number of cases they resume cohabitation?—Yes, undoubtedly.

7409. So what you say is that in a very large number of cases if they had been able to obtain divorce their married life and their home would have been broken up finally, whereas they might but for having obtained a divorce have resumed cohabitation?—Possibly, but I do not think the difficulty as to divorce arises so much with regard to the parties themselves as with regard to the children. That is the crux of the whole matter so far as separation is concerned: how to deal with the children if there is any alteration in the law with regard to divorce.

7050. But is it not your experience, in a large number of instances, the wife, in spite of what her husband may have done, wants him back again?—Undoubtedly. If a man is kindly and generous in his better moments they will forgive anything. I have known wives go to the door of a brothel for their husbands who have been there a week or a fortnight at the time, and have been delighted to get them back.

7051. And would not you find that the men began to get a desire for the wife and children in spite of what they are doing?—It is very curious, but according to the accounts of their wives, I have often found that adulterous husband are kindly men, though of the most dissolute type, and the women would forgive anything but direct cruelty to themselves. A cruel word is far more to a woman than the most flagrant case of misconduct.

7052. Then in a great many cases of separation orders at present it is an episode rather in their married life than a termination of it?—Certainly. The last remark I heard made by a woman who had applied for arrears of alimony was—her husband had spent five months of the last twelve in gaol on similar applications—she said, "What good are these months "to me, sir?"

7053. Would your experience show that in a very few cases where application is made to enforce an order, the objection of the adultery of the wife is alleged by the husband?—An application to enforce the arrears of alimony?

7054. Yes—that it is very rare that the adultery of the wife is alleged in those cases?—Yes, I think it is not often that it is alleged. Of course it is fatal if it is proved.

7055. With regard to the hard cases, is it not your experience in Leeds, where you have considerable experience with the class you are speaking of, that working men with wonderful readiness find relations and neighbours to keep house for them, if anything has happened to the wife, without immoral relations?—I think it is so in many cases, but, if a man chances to have no relation in Leeds, he is in an extremely difficult position, because it is so difficult to get a

respectable woman to accept the situation, in consequence of what is sure to be said by the neighbours, and so on.

7056. In your long experience of these classes in Leeds, have you heard any general allegations as to the present state of the law being a grievance to the poor?—I have never heard any general statements. I have only heard individual persons who have come and complained, no doubt with some bitterness, that they were precluded, and I have been asked whether there was no general fund at their disposal to enable them to get a divorce.

7057. With regard to what you said as to local tribunals, you were asked by Lord Guthrie whether in your judgment it would not be merely a question of fact for these tribunals to try. Your view is there would be a great deal more beside fact to be tried, and a great deal would rest on the discretion of the judge?—I think it is a strong thing to say that the judge of the Divorce Court is only trying fact. The issues, generally speaking, are very difficult questions of fact, and so mixed up with law, that I think it is hardly fair to say they are simply questions of fact.

7058. And if there were extensions of ground it might be more difficult?—It might be easier if desertion, for instance, were made a ground.

7059. But if desertion were made a ground, you have said, connivance at desertion would become very common?—I think so.

7060. And difficult to detect?—Yes.

7061. One question with regard to the form of the Act of 1895. Do you express any opinion as to how to change the present provision with regard to the wife leaving her husband before she can apply?—I think it is a great hardship she has to leave the children behind. If she leaves with every circumstance of brutal violence, turned out of the house in the middle of the night perhaps, and goes to the magistrate the next morning, and he says, "You must not go back"; she says, "The baby is there; what am I to do?" and if she cannot make provision for the custody of the children, she says, "Well, if I cannot apply, I must "go back and be beaten again."

7062. And you would be in favour of an amendment with regard to that?—Yes, undoubtedly. I think it ought to be provided that in cases of cruelty, at any rate, there should be no necessity for her to leave the house. It may be otherwise in a case of wilful neglect (because the neglect alleged is generally that he will not find her food, and so on, and she has to leave him); but in cases of cruelty it is a very serious difficulty that she has to leave him before making her application, and very often one has to evade the Act of Parliament, and say, "Is the house in your name; "if it is, tell him to go," and if he will not go away, we hold that they are living apart.

7063. With regard to what you said was a question of public policy, with your long knowledge of the working classes of Leeds, would you say that your difficulty about any extension of the grounds of divorce was due to the fact that such extension might seriously unsettle the married life of a large number of respectable working people?—I should say that any change that might have—as a change of that kind might—such far-reaching effects ought not to be undertaken lightly, and only for the gravest reasons.

7064. (*Lord Guthrie.*) One question about reporting. Are separation cases reported in your local papers?—Not that I am aware of; not in the papers that I see. Occasionally remarks of the parties or of the magistrate are reported, but not details at all.

7065. (*Sir Lewis Dibdin.*) I gather your view is that of the very large number of separation cases that come before you, it would not be accurate to say they are all, or nearly all, cases of potential divorce?—Oh, no.

7066. Although there are a great many amongst them that might be divorce cases if the parties could afford it?—Largely cases of idleness, drunkenness, and refusal to maintain the family.

7067. I thought you said there would be perhaps 10 or 20 cases in Leeds in the year where poor people if they could get divorce would go for it, and now do not do so?—That is an outside figure. I do not profess that I know of that number of cases myself, but I know of a certain number, and I assume there must be some which I do not know of.

7068. Of course it is a mere guess, but a guess formed on a certain amount of experience as a stipendiary magistrate?—Yes.

7069. And that is your view—that some figure like that is correct?—I should say so. Most people in Leeds, I think, would come to see the magistrate about it if the occasion arose, and certainly nothing like that number come. I should say 5 or 10.

7070. Now you are, in the first instance, against local courts for divorce?—Well, I would rather say I am in favour of the High Court retaining the jurisdiction.

7071. And that I gather is on the view that it is bad for the commonwealth that divorce should be made too easy?—I think there would be many standards of divorce.

7072. Have you considered Mr. Justice Bargrave Deane's suggestion. I need not repeat it because I have no doubt you heard me ask Mr. Neville?—Would you remind me of it?

7073. His suggestion is that a judge of the Probate Court—either one of the present staff, or an additional judge of the Probate Division—should go down from time to time to different centres, and try local cases?—I should say if a High Court judge would consent to do it, it would be very beneficial, but I should have thought that that was rather a question of machinery.

7074. But if the machinery could be arranged that would have the effect of keeping the divorce jurisdiction on a high plane—proportionate to its importance—and preserve uniformity of treatment?—I think it would certainly tend to preserve uniformity of treatment which I regard as of supreme importance. I think it is very important for the people themselves to know in what circumstances they may reasonably expect to obtain a divorce, and not be in doubt as to whether they are likely to be able to secure it.

7075. And it would seem if that was done that divorce was a much more important matter than it would if a man could go to the nearest county court?—I do not see how it could go to the county court without ample power of appeal, and that would make it as expensive as going to the High Court.

7076. I gather from your experience in the police court in these cases, you think for the ends of justice both sides should be represented?—I think it would be very desirable if they could be.

7077. You find it difficult even in cases of separation orders?—Certainly. A man or woman, as the case may be, has no knowledge of the necessary evidence to bring to me, the issues that are likely to be raised.

7078. Would not that difficulty be greatly aggravated if what was in issue was not only separation, but divorce itself?—I think it would be impossible to conduct such cases in the police court either with or without counsel—in a day's work in the police court.

7079. You have told us you are against making separation orders temporary only. Would your view be that the present practice in which they are described as permanent would be more accurate in calling them indefinite? I mean the parties can put an end to the order at any time?—Yes, no doubt resumption of cohabitation *ipso facto* puts an end to it.

7080. Therefore they are indefinite rather than permanent?—They are certainly not permanent in Leeds. They are very transitory in Leeds.

7081. And you see no advantage in making them temporary for a stated term in the first instance?—I am afraid not. I should think there would be great difficulty in getting the two parties to the court again. You might get one, but it is very difficult to get them both there even when the order is made.

7082. You have always been against granting separation orders where maintenance only was required?—I have always been of opinion that that was the construction of the Act of Parliament, but many who should know better than myself have taken the other view. Very potent reasons were urged to the contrary.

7083. I think it was in answer to a question by Lord Derby that you said with some emphasis, if any alterations in the law of divorce were necessary, you

would make long-continued desertion a ground?—Yes.

7084. Do you lay emphasis on the *if*. In other words, are you or not in favour of any extension of the grounds of divorce?—As an abstract question of ethics I have not considered the matter. I do not know that any necessity for such extension has been disclosed so far as the persons I have to deal with it are concerned.

(*Sir Lewis Dibdin.*) That is the question I wanted to get at.

7085. (*Mr. Brierley.*) Is it the practice in Leeds for persons not of the class which most of the separation orders relate to, but of the rather better class, to resort to you for advice?—Yes, it is; but they rarely come to the court.

7086. No, not in open court, but they come to the police court?—Undoubtedly; they are often brought there by the clergy and ministers of other denominations.

7087. Do you find there are many husbands who complain to you of their lack of ability to obtain divorce from their wives?—Not many.

7088. Would the 5 or 10 cases which you have referred to include both husbands and wives?—I think so.

7089. But with regard to the husbands; we have had a good deal said about wives. Is it not your experience that a good many working-men who come and tell you a sad story about their matrimonial troubles and you find they are unable to get any relief from lack of means?—Undoubtedly that is so, and it makes such an impression on one's mind that one is inclined to go wrong on figures, and if I had not reflected I should have given a much larger figure because the individual cases impress one.

7090. But on reflection do you think that 5 to 10 is a reasonable figure?—I think of those that come to me it is so. There are other magistrates in Leeds.

7091. I thought perhaps the applications were made to you?—There would be so many in the morning—generally about seventy applications are disposed of in half-an-hour, but I only see a certain section of them. If the application were such as I have mentioned they would come to me.

7092. But it would not be known until the man appeared?—Yes.

7093. (*Sir Lewis Dibdin.*) Until recently you have been the only stipendary magistrate in Leeds?—Yes, until two months ago.

7094. (*Mr. Brierley.*) But these applications for divorce are made to the lay magistrates as well?—Undoubtedly.

7095. Just one word with regard to the enforcement of these orders. You say you think they ought to be enforced immediately. There has been a recommendation of a Committee sitting on the Bastardy Acts that these should be enforced within seven days. Would that meet your view?—Certainly; I rather suggest at the end of the first week.

7096. Seven days from the order?—Yes. I would not, perhaps, let there be execution for the costs at the end of the first week.

7097. There has been a suggestion whether it would be advisable to have the power to attach the wages of the husband by giving notice to the employer that a certain proportion of the wages should be paid direct to the woman. Do you think that would work in practice?—In many cases I am afraid it would be rather difficult to enforce.

7098. Your experience is that a good many of these husbands against whom the separations are made are in casual labour?—Yes.

7099. Porters working for various employers or hawkers?—Yes.

7100. But there are a large number in regular employment?—Yes.

7101. Do you think it desirable some power should be given to the court to order an employer to pay a certain proportion for the wife?—It would be very desirable, but you see if there was 20*s.* in wages one week it might be the amount would fall to 12*s.* in a holiday week, and it would be very difficult to work in practice.

7102. He would know beforehand, would he not, that these wages were likely to be short?—But he would not provide for that.

7103. But that is no reason why the children should suffer. However, that is the practice in Scotland, and I wondered if you thought it would work well in Leeds?—In some trades I think it would.

7104. I did not suggest that the magistrate should be obliged to order it, but that in proper cases he should have power?—If you left it in that way, that there was a discretion in certain cases to make the order; but is the suggestion to make it compulsory?

7105. I did not understand so. I was only asking if you thought it would be a desirable power to confer?—Oh, most undoubtedly.

(*Sir George White.*) Might I ask another question. I think it is very important that the Commissioners should understand your evidence as regards the likely number of divorce cases out of the 2,000 or 3,000 cases that have occurred since 1895. In the first instance, you said there might be 10 or 20 which were suitable cases for divorce out of this number.

(*The Earl of Derby.*) It was in answer to a question of mine, the witness said there would be 10 or 20 who had the evidence for divorce.

(*Sir Lewis Dibdin.*) No, Sir George is quite right.

(*Sir George White.*) And then he reduced it to 5 or 10.

(*Chairman.*) Well, we have it down what he did say. Would you put any question and then get the answer?

7106. (*Sir George White.*) I wanted to know if that was the witness' evidence. Is there less than 1 per cent. in your judgment out of the cases that come for separation that would ordinarily be suitable cases for divorce?—I should say certainly in not 1 per cent. of the cases tried before me are facts brought to my knowledge that would give a person any chance of success in the Divorce Court on the evidence given, but of course a great many facts that would be important in the Divorce Court do not come out before me. If the husband has been guilty of persistent cruelty, it is unnecessary for the magistrate to inquire as to adultery.

7107. But would not there be more than 1 per cent. where facts came out, perhaps, that showed it would be suitable for divorce?—I daresay there might be more than 1 per cent. where the wife made the allegation, but what ground she may have had for it we cannot tell.

7108. If what you say is right we may assume there is no need for extended facilities for divorce?—There are cases that do not come under this Act of Parliament at all, as where the man's wife leaves her spouse, and starts an establishment with another man. Well, she has no cause for complaint and she does not come to the court, while the husband has no right under the Act, and therefore does not come and never could come. It follows that a magistrate can only hear of such a case by the husband coming and saying, "Would you tell me if I have any remedy, and, if so, "what; how can I get a divorce?" Those are not cases that arise under the Summary Jurisdiction Act of 1895. The husband is not able to come for relief under the Act of 1895. It is only the wife that can come, and if she has misconducted herself she does not come.

7109. But I certainly understood previously, your evidence referred to the 2,000 or 3,000 cases, and that there was 1 per cent. of those 2,000 or 3,000 cases in which there might be divorce?—I do not remember saying so.

(*Chairman.*) We shall be able to see by the shorthand note.

7110. (*Mr. Spender.*) Is there any record of the separation orders that are granted under the Act of 1895 which have afterwards expired or been terminated?—No, there is no record of that.

7111. (*Chairman.*) On the last point Sir George White asked you. I confess what you say now a little surprises me, because in your proof you say, on page 1: "As the wife is the complainant, and adultery on the part "of the husband does not ordinarily afford a sufficient

" cause of complaint, there is very little ground for " determining how often such antecedent adultery has " in fact existed. Judging, however, from the allega- " tions of the wives, and the admissions of their " husbands, I should say that it is by no means of " rare occurrence, at any rate so far as promiscuous " intercourse with prostitutes is concerned "?—I was there referring to the whole of the information before me—out of court as well as in court.

7112. Does not that paragraph lead to the conclusion that if the wife who came for some purpose could have proved adultery against her husband and could have obtained relief in your court, she having a case, by admission, of the adultery of the husband, and that those cases were not of rare occurrence?—Undoubtedly many women come to the magistrate for advice, and if their story is true, their husbands have been guilty of misconduct, while husbands come and say the same thing; but I mean of the cases tried under the Summary Jurisdiction Act of 1895, not more than 1 per cent. disclose, in evidence, facts that would apparently justify divorce.

7113. Is that because disclosure is not relevant to the matter you have to try?—Very possibly; we stop them. It is the practice in our court when a wife is going into an allegation of adultery to say: "Oh, you " have made out a good case of cruelty; why go into " the other question?"

7114. You stop it as irrelevant?—Yes; I say I do not require to hear any further evidence.

7115. I should like to know whether you get it through the summons or by general information. You adhere to what you say in this passage: "Judging, " however, from the allegations of the wives and the " admissions of their husbands, I should say that it " is by no means of rare occurrence, at any rate so " far as promiscuous intercourse with prostitutes is " concerned"?—Well, it is not a pleasant subject to discuss, but a good deal of my information depends on evidence given on summonses for indecent conduct in the public streets and elsewhere.

7116. Yes, but the point is what Sir George White suggested, that if there were relief in the country on the ground of the adultery of the husband—and something if you like in addition—desertion or cruelty—there would be many cases that the poor could bring which they cannot now bring?—Undoubtedly. There are many cases proved of married men misconducting themselves in the public streets in circumstances which result in their being brought before the police court the next morning.

7117. One or two points I want a little more specifically, because at present I do not quite follow the view you present. You, as a magistrate, have dealt with some 2,000 or 3,000 cases?—Yes.

7118. In the last 15 years?—Yes.

7119. What are the main grounds on which you have dealt with those cases? Cruelty is one, and desertion is the other?—Yes, cruelty and desertion, or frequently both coupled in the summons.

7120. They may be coupled, but they may be separate, and those are the two large questions with which you deal in those cases?—Wilful neglect occasionally.

7121. That is analogous to desertion?—Yes.

7122. So that the grounds may be treated as cruelty and desertion?—Yes.

7123. We are told by some witnesses those are the two classes of difficulties that might be met with if county courts had jurisdiction. I want to know on what ground you differentiate the capacity for the county court judge to deal with those matters when the magistrates find no difficulty in dealing with desertion and cruelty?—I think magistrates do find great difficulty, and very often do make and must make considerable mistakes. We have to deal with issues involving charges against persons who are absent, and whom we have no power to cite, and I think very often we do make great mistakes.

7124. But if you dispose of this large number of 2,000 or 3,000, which is about four or five times as many as the High Court divorce cases, why do you see much difficulty in the county court judge disposing of the question of cruelty or desertion as easily as you do yourself?—I think the county court judge would be able to do it quite as easily, but much graver consequences would follow if he made a mistake than if I did.

7125. Why do you say the consequences are graver? If you get a permanent separation between people, do you think it is more or less grave than an absolute divorce?—I think if experience shows that the separation, so far from being permanent is merely temporary, and that scores apply to the court who have already had one or two of these separation orders——

7126. I quite agree, but I want to get at close quarters. If a case of cruelty were such that no magistrate would think it possible for those people to live together, or if the desertion were such as occurs by people going to America, where you get necessarily the idea of permanent separation, is that graver in reality than the absolute dissolution of the tie?—Well, I think the effect of our order in most cases is merely to require the man to give his wife money, which in any event he ought to pay, because she is keeping the children.

7127. But does not that lead to this, that you ought to make orders that are put an end to; and, therefore, possible temporary orders; but in cases where the orders must endure, that they should not be made by the magistrates?—Possibly that would be a consequence.

7128. I do not see that you answer my question. Which is graver, the permanent separation order which you meant to be permanent, or a complete dissolution of the tie?—I should have thought that, inasmuch as the order of the magistrate for separation can be put an end to by the parties in a moment if they like, that in itself differentiates our order from an actual dissolution of the marriage; in that case they would have to go through the form of marriage again.

7129. The point does not meet my difficulty. Have you met with cases of the man going to America or the woman going to America?—Yes.

7130. Is that common?—Yes, fairly common; disappearing at all events.

7131. How does the separation order you make then assist?—It does not assist; it simply keeps the man out of the way. Men frequently disappear, and whether they have gone to America or not we do not know, but the order is of no value; it is a mere piece of paper.

7132. Is that a case where you think there should be a dissolution?—If there is to be any change in the law I should say that is just the case where there should be a dissolution.

7133. I still do not see where you find the difficulty the county court judge might have in dealing with the cases. The only case he would have to deal with which you do not deal with would be the question of fact, namely adultery?—Yes.

7134. I suppose you have to deal with that in cases where it is set up as a defence?—I have suggested that the county court judge should deal with those questions, so far as they raise issues of fact, but that the High Court Judge should have a discretion as to the order to be made on the findings, because I felt there might be a great diversity of practice when the point came as to what the county court judge should decree.

7135. Where does the diversity come in if it is purely a question of fact?—Well, I speak with very little knowledge, but I have heard that there has been very great diversity in the High Court as to whether the proceedings should end in a dissolution of marriage.

7136. I do not quite follow?—Well, I thought different judges had taken different views upon a given set of facts as to whether there should be or should not be a dissolution of marriage.

7137. The only difference I have heard suggested—and I do not know whether I accept that—is that cruelty is looked at in a different way?—I thought there was evidence that there had been at times two standards adopted.

7138. On that point?—I think 25 years ago it was said that there were different standards, and must necessarily be where there were two judges.

7139. We have only heard that suggested on the point of cruelty. What I want to get at is this. Whether as an experienced magistrate you see any practical difficulty in the county court judge trying pure questions of adultery, and why one county court judge should have a difficulty on the point and another should not?—I think while one county court judge might take a clear view that certain facts conduced to adultery, and might decide that they did, another would have a case on similar facts and perhaps would have considerable difficulty in deciding it.

7140. You mean it is not only a question of adultery, but what conduces to it?—Yes.

7141. Do you think but for that there would be no difficulty?—I think in nine cases out of ten there would be no difficulty.

7142. Supposing the county court judges had the jurisdiction that is suggested, do you think in every case they should be bound to take the opinion of the High Court judge?—That either party should?

7143. Yes, or the judge himself?—I think that would meet the difficulty very largely.

7144. Now, you know at present the wife has a right to come before you in the cases you have enumerated, and the husband has not—except in the drunkenness cases?—Yes.

7145. Do you think that is right? He has no remedy in the case of a woman who is not an habitual drunkard, but who makes the home impossible, and it is tantamount to cruelty in the sense that it makes life impossible?—I think if this Act of 1895 is to be a working Act that a husband should, in case the wife pawns his goods and lands him in serious debt and spoils his life, have the power to get a separation order; not that it would be of much value as an order, but it would prevent his being responsible for her debts, and so on.

7146. And enable him to lead a respectable life?—I think so, certainly.

7147. Then you said you had orders frequently put an end to by the parties coming together again. Can you give me any notion of how many of those orders terminated because the parties come together voluntarily, or because the husband is compelled or the wife is compelled because of the nonpayment of the alimony?—I should say in most cases through stress of poverty consequent upon nonpayment. She goes to him and says, "Are you going to pay this?" and he replies, "I "cannot, I am out of work," and so on, and they come together again.

7148. Is that in cases where there was such misconduct as there might have been a permanent divorce?—In some cases, certainly.

7149. One other matter. A question was put by one of the Commissioners—I forget which at the moment—that if desertion and cruelty were turned into grounds for divorce it might be much more readily used than these cases before the magistrates; but would that be quite so if the divorce was for desertion for perhaps a long period, say 4 or 5 years, and persisted in?—Your Lordship is speaking of desertion where the man ——

7150. I mean there is this difference. Your powers as to desertion operate the moment after the party has left the house?—Yes.

7151. And permanent separation orders can be made if the husband has gone away for a week?—Yes.

7152. I do not think it is suggested that that should be a ground for divorce, but you would agree that that is a different matter from the entire married life coming to an end?—Yes.

7153. Then the same with cruelty. If the cruelty that is required to be protected against is in the magistrate's opinion of a temporary character, and not likely to be of permanent seriousness, would not the same difference arise as compared with the case where the cruelty was such that no reasonable man hearing the story would say it is impossible for these people to live together?—We have only power to grant separation orders in cases of persistent cruelty, not mere cruelty.

7154. What does that mean?—That I do not know. The Act of Parliament says "persistent cruelty."

7155. But there is a considerable difference in cases, say, where people drink, and that has grown and grown till life is impossible, and certain other cases?—I quite accept that distinction.

7156. Would you see any difficulty if divorce were extended to cases where life had become absolutely impossible?—The difficulty that occurs to my mind is know how far that might induce the man to make life impossible.

7157. Just one other point I wanted to ask you. In the case of women, you said their general object was to get the husband back if possible?—If he were a kindly and generous person.

7158. Would that suggest that there would be no real objection to putting men and women on the same footing, and that it would only be in those cases where the wife considered she ought no longer to be tied, that she would put her remedies in force?—I understood the suggestion to be to give the wife ——

7159. What I mean is this. Your view is that, in most cases, a woman forgives and wants to get the man back—in the class of life with which you are dealing?—Yes.

7160. Well, take the case where she has no such desire at all, and if that is not frequent, there seems to be no danger in your view in giving the remedy to the wife, because it would only be used in such cases as this in which it was desired?—So far as that objection is concerned, what I intended to say was, that it was a very grave innovation, and I should have thought one of the grounds for not introducing the innovation would be that there was no great demand for it.

7161. But taking the case when there is a demand, why should not she be entitled if she considered that the husband's misconduct was such as to make it unreasonable for her to live with him at all, even though it is in a small number of cases?—I quite agree. That is a matter of policy, and there is no reason of abstract justice against it.

(*Sir Lewis Dibdin.*) May I ask a question, Lord Gorell?

(*Chairman.*) Certainly.

7162. (*Sir Lewis Dibdin.*) Did I hear you say you thought persistent cruelty was a difficult matter to prove?—A difficult matter even to understand. We have had very little to help us to know what Parliament meant by persistent cruelty. It must be something more than cruelty without an epithet.

7163. In reference to the questions put to you by Lord Gorell, with regard to the county court judge and the ease or difficulty with which he will dispose of these cases, this would be one of the difficulties, in your view, in settling what was cruelty?—I think so. Whether a person has been cruel is not a simple question of fact alone, but is a question of fact to be coupled with all the decisions on the subject by which the judge is bound.

7164. And raises a risk which I think you apprehend of difference of decision in different courts?—I am sure judges would read the different cases, and some would lean to one view, and some to the other

7165. (*Chairman.*) Is there any real difficulty when the solitary question is as to the safety for a woman to live with the man. That is the form in which I have put it to juries hundreds or thousands of times?—The House of Lords found a difficulty in deciding it, did they not?

7166. No, their decision covered that?—Well, it is easy to put it like that.

7167. Supposing that was the definition stated in the Act, that the judge must find it is no longer safe for the woman to live with the man?—I think, if the only decision before the judges were one in the terms put by your Lordship that it would relieve the county court judges of an immense amount of difficulty, but they would be bound to listen to the cases cited to them.

7168. But supposing you laid it down in the Act of Parliament that cruelty must be such as to make it unsafe?—I think it would be an immense assistance, and minimise the difficulty.

7169. I do not think the decision in the House of Lords is different from that?—It is not recorded in quite so compact a form.

7170. However, if that were definitely put, you think it would relieve a difficulty?—I think it would be a great help to us to have it put in that form.

Mr. JOHN GILBERT HAY HALKETT called and examined.

7171. (*Chairman.*) You are stipendiary magistrate for the city of Hull?—Yes.

7172. How long have you been in that position?—Nearly nine years; nine years next June.

7173. The first point on which you have prepared the proof, is whether there should be extension of divorce jurisdiction to the county courts?—Yes.

7174. I do not think we need read all that, but will you state the conclusions to which you have come with regard to that?—First of all as to whether there was any real demand amongst the working classes for such extensions, I have come to the conclusion that there is no real demand; certainly not such a demand as to amount to anything like a political question, and, indeed, not a sensible demand.

7175. What does that mean?—I mean that the demand is not very appreciable as far as I can gather. There seems to be some unsettling of the married life, especially among young people, by the 1895 Act, and I think such demand as exists is to a great extent due to that.

7176. What is the demand, do you say, which exists in consequence of that Act?—In the case of young people who have married, for reasons urgent or otherwise, and do not yet understand each other, I think the fact that there is a remedy provided by the Summary Jurisdiction Act has some unsettling influence.

7177. Then you regard that as a bad Act?—No, when its permissive nature is understood—that an order may, but need not, be made. Very often young married women come to the court with hopelessly weak cases—alleging persistent cruelty and neglect to maintain and the like. There is nothing behind it but the inability to understand their husbands, and when adjournments are adopted, and the parties are talked to in private in one's room or in court, these difficulties are often got over, and but for the Act I am sure the lives of many women would not be safe in grave cases of cruelty and the like.

7178. Do you meet with such cases often?—Happily not very frequently, but one does sometimes meet cases of an exceedingly bad type.

7179. Are those cases of grave cruelty such as can be got over, or are they cases in which the magistrate considers they ought to be permanently separated?—In the cases such as aggravated assaults and persistent cruelty—the bad ones—there seems to be very little likelihood of their coming together again, although they do sometimes.

7180. How do you think those cases should be dealt with when the magistrates conclude they will not come together again?—I do not think the magistrates can conclude anything, because the long-suffering of women is such an extraordinary quality that they often do come back, much to one's astonishment, and I think it is difficult to say what would happen.

7181. Do you think in the case you are speaking of they should be entitled to complete divorce?—That is a very difficult question, and opens a large field. If they are to be divorced for one thing why not for another? I should rather not express an opinion favourable to that. I think no doubt it would remedy a few hard cases, but I think generally it would have an exceedingly bad influence on the homes of these young married people. I am afraid they would resort to collusion and bogus cases.

7182. But at present the state of the law does give relief in these cases of a very cruel kind?—There are very cruel cases, of course.

7183. Which occur although the law is as it is at present?—Yes.

7184. However, you say you think extension might not be beneficial to the working classes?—No, I think not. I think if the King's Proctor's department were increased to any extent it would be impossible to stop collusion. When you see, as I see, these bogus cases every day young people desiring beyond anything to be separated; and a mere separation would be nothing to being absolutely free, and if they thought they could be free by going off with somebody else, I am sure that would be the result.

7185. Now, take those cases in which a divorce should be permitted. Is it your experience in Hull that the poor can or cannot get that relief?—No, I am quite certain there are many cases where they cannot afford it.

7186. What would be your remedy for that?—If anything is to be done I should be very much disinclined to have local courts of any sort. I think the best plan would be the suggestion that I understand was made by Mr. Justice Bargrave Deane.

7187. (*The Archbishop of York.*) Might I say I think this comes later on in the proof in detail?—Yes, I think I deal with that later on.

7188. (*Chairman.*) Then I will follow the proof. I thought it passed away from that?—I daresay I have strayed from it.

7189. Then we will pass on to what you wish to say before we come to that. You deal first of all with the question of married parties being too young?—Yes.

7190. Just state to us what you have found about that, and what conclusions you draw from it?—About the young marriages?

7191. Yes, "A very high percentage of youthful marriage"?—Yes, I say here they are "often marriages of necessity, and, even when they are not, the "young people are frequently wholly unfitted to "understand each other in their new relationship, "and to enter into a common life." Do you wish me to go on with that?

7192. Not to read it, but I want to know how the fact of youthful and improvident marriages leads to what we are considering?—The effect of the Summary Jurisdiction Act is at first bad, but when they come into court with these flimsy cases, I think a magistrate by adjourning the cases and talking to them is frequently able to get them together again. There are dozens in my nine years—or perhaps hundreds of cases—where the relations of the couple appeared hopeless, and it seemed that they would never live together, and one has adjourned the case and talked to them, and they are getting on well now. If cheap divorce had been at their doors they would, in nine cases out of ten, have given real reasons for the court's jurisdiction, and they would now be separated.

7193. Would that be so if the extension were confined to certain grave causes for divorce; for instance, desertion for four years?—I think the adultery and cruelty would provide ample materials. You would get both easily, and therefore it seems to me, bad as things are now, the tendency would be worse if you had the Divorce Court at the doors of these young people. That, of course, is one of the chief difficulties, because one sees the hard cases. Some one said something about the war. There were many cases after the war, and I know of individual hard cases now, and if one thinks of these hard cases the very hardness of them is likely to magnify them in one's eyes and make one disregard what the general tendency would be.

7194. Then your view would be that extension of ground is not desirable?—I think extension to the extent of having a local court is not desirable.

7195. Would you keep the two things separate?—Yes, I will.

7196. Well, if you like to deal with it now, do so?—I mean extension to a local court. I think that is not desirable.

7197. They are two totally different things?—They are.

7198. One is the point whether, assuming the law is left as it is, it is desirable that that law should be administered in the locality where people can use it.

Perhaps you would state your points first about that?—I did not quite catch what you said about that?

7199. There are two totally different points. One is whether, if the law should remain as it is with regard to divorce, it should be capable of being administered by a local court in order that people who cannot afford it now could go; and the other is whether divorce should be extended to different grounds from what exist now. I will take them in whatever way you like. Which will you take first?—I thought I was addressing myself to the extension to local courts. There are other things to be considered with regard to young couples. There is the different code of morals in the classes which the extension would include. A co-respondent is not able to go to his London club as he formerly did; whereas in the working class a man would go into his public-house as rather a hero than otherwise; and one has heard of cases where wives have been changed and sold for pints of beer. I do not say they are common, but things of that sort have occurred, and one regards extension rather with dread from those points of view.

7200. Do you mean that the extension would aggravate that. Does that exist at all really?—Well, there was one case I believe not long ago. Children have been sold for pints of beer, as I have heard of once or twice.

7201. Then your view is that extension on the grounds suggested is not desirable?—That is my view, yes.

7202. Might I ask you about that. Does that exhaust all you have to say upon the grounds of extension?—Yes, I think that does.

(*Lord Guthrie.*) To local courts.

7203. (*Chairman.*) No, extension of grounds. We are getting into a little confusion. You said you preferred to exhaust the question of grounds before going to the question of local courts?—No, I understood the first thing was the extension to local courts, and I dealt with that.

7204. Then you would be against giving any local jurisdiction?—I would.

7205. For the grounds you have just mentioned?—Yes.

7206. Would not you go so far as Mr. Justice Deane with regard to a High Court judge trying them?—Yes, that is where I felt I was in a difficulty. When I prepared my evidence I dealt with the extension as referring to the local courts; and later, if extension were desired at all, I dealt with the question as to which court, but I will put in a sentence here the argument of Mr. Justice Deane, that the proper way to do it, if increased divorce facilities are required, is to appoint an additional judge of the High Court, and use him.

7207. You do not want an extension at all, and if it is extended you would have it done by the judge of the High Court going and doing it on the spot?—Yes.

7208. Would that permit of the cases being dealt with in the local registry up to trial, in your view?—In undefended cases the difficulty about collusion is so great. I suppose it would be impossible to get the evidence before the judge. The advantage of the judges in the Divorce Court is that they are so skilled in detecting collusion. That would be a difficulty. Evidence that is sent up to London is not the same thing as a judge hearing it.

7209. You do not quite follow me. You think the judge should hear the trial?—Yes.

7210. Does that necessarily mean that the proceedings up to trial might not be in the county court?—Oh, certainly, all the preliminary proceedings and pleadings.

7211. Would you adopt that view?—Yes, certainly.

7212. But assuming the judges of the division could not do it, would you feel inclined to favour the judge of assize?—I think probably that would be the worst tribunal of all. The time that is grudged to judges of assize, and the terrible rush there is at the end of an assize, would make things worse than anything else.

7213. Then there remain county courts and the summary magistrates' courts. Have you anything to say about that?—I have said in my proof that perhaps if there were stipendiary magistrates all over the country they, dealing, as they do, with kindred matters, might be a more satisfactory tribunal than county court judges. They sit day by day, and have to deal with the 1895 Act cases.

7214. Where there were stipendiaries, you would use them?—Yes.

7215. And where there are county courts you would use them?—Yes.

7216. Only if it is decided that it is to be a local court and not a High Court or assize court?—Yes. I ought to say that a very slight cheapening of the High Court costs might afford some remedy. If that was not a sufficient remedy, then I should suggest an additional divorce judge should go on circuit. If that is not possible, then county court judges.

7217. Then it is not desirable to have a local court at all, you say, even though the High Court judge tries the case, because it brings the operation of the law too near to the people?—I would not put it very strongly against that—not very strongly. I think it would not make very much difference, because this class of people would not be able to afford the fees; but if you had a very cheap remedy at the doors it would be undesirable.

7218. Now would you tell us what your view is about the extension of grounds to such matters as have been suggested—namely, desertion for a limited period, cruelty, insanity, and crime. I do not think you deal with those?—No, I do not, because these were not in the questions that were originally sent to me.

7219. The questions sent to you were what amendments, if any, you would suggest?—Yes.

7220. So as to let it be quite spontaneous, no questions of a particular kind were put?—No. If you are going to have divorce for desertion alone, why not a lot of other things?

7221. Do you get in Hull cases of people disappearing out of the country altogether?—Yes, sometimes; men go abroad; they do it for all sorts of things. It is not only Summary Jurisdiction Act cases, but bastardy cases. The men bolt if they have an order to pay.

7222. And do women bolt too?—The women lose trace of them altogether.

7223. But do women bolt out of the country?—No, mainly men—the men against whom orders are made.

7224. What would be your view as to the remedy there; the order made is useless?—Absolutely.

7225. There is possibly no proof of adultery, and no possibility of proving it. Would you grant a divorce there?—Well, it is a very hard case, but I think if one admits that one is to assume facilities for divorce for all sorts of things—aggravated assaults—conditions in which it is impossible for a woman to live with a man.

7226. Well, supposing it was unsafe for her to live with a man, and that was likely to continue, what would you say as to her living permanently with him or not?—The Summary Jurisdiction Act gives her a remedy.

7227. That is only a remedy to keep away, but not to dissolve the tie. Is it your view that the tie should remain?—I think it is a very difficult question, and it is not a point which my work at the court qualifies me to express an opinion upon. It is a question of general social policy, and possibly a religious question. I think this is a very hard case, but it is so bound up with so many hard cases, that if you gave way once, you would have to all round.

7228. Would you suggest the other hard cases to us?—Well, where the husband is persistently cruel; where the woman knows her life has been unsafe for years.

7229. But I want to get the other hard cases besides those mentioned?—Well, I think there are several—cases of aggravated assault; cases where people have been convicted on an indictment; long desertion; when the husband is sent to penal servitude; confinement in a lunatic asylum—cases of that sort. There are many hard cases.

7230. Would you keep to the statement of what the others are, because we have had all those. Those are only three—cruelty, desertion, and insanity?—And imprisonment.

7231. Yes, well four?—Yes; I do not know that I can mention any more off-hand.

7232. However, your view would be, that though desertion of such a character as that was a very hard case, it ought not be a ground for dissolution?—I would rather not advocate it because I do not think my experience entitles me to give an opinion about it.

7233. Now the next point you deal with is your view as to the working of the Summary Jurisdiction Married Women's Act of 1895. Would you tell us what your view about that is?—I think the fact of the existence of the Act has an unsettling influence. That I have already said.

7234. Does that mean that you would do away with the Act?—No, I would not, but the reason why the Act has an unsettling influence is that it is not understood by, I am afraid, many of the justices of the peace in the country, to be permissive—that the court may, but it is not necessarily obliged to separate people. I think if that is made very clear, as one has tried to do for years past, and every effort is made to get the young people together, who, with the assistance of their respective relations, have so far failed to understand each other—I think in that respect the harmfulness of the Act would be lessened.

7235. Would you limit the power of the magistrates to make an order for a time, to begin with?—I think there are great difficulties about that.

7236. Of course he need not make the order for separation at all if it is only maintenance?—I endorse what Mr. Atkinson said about that.

7237. Supposing you get cases where there is persistent cruelty; that may vary in degree enormously—Yes.

7238. I suppose a magistrate may think if time is allowed they may come back, and he adjourns the summons. Would it not be better to make it temporary in those cases rather than adjourn it?—I do not know. I think the difficulty would be ——

7239. And say: This will come to an end unless you restore the summons?—I think where cases are really very bad it is doubtful whether they will get together again. The woman will probably ask it to be continued in the bad cases, and would have gone back in the good. I do not think it would make much difference.

7240. How would you treat the cases where you think there is no reasonable probability of their coming back. Up to that case, I understand, by an adjournment or a temporary order, you might hope for a reconciliation; but supposing you get cases where you have no reasonable prospect?—I think when the order is made nobody could tell what the woman would do. I think in a case of that kind you would get an advantage by a temporary order.

7241. You would give the power to make a temporary order or a permanent one?—Yes, I think that would be advisable.

7242. Then you say, "This evil can be mitigated "by discreet and restrained administration." I suppose that is by the justices or magistrates holding they are not bound, and trying to reconcile the parties?—Yes, I do not think the Home Office could do better than circularise the justices of the peace. I am sure it is not understood, and I think a Home Office circular would make it clear that it is a permissive Act, and not compulsory.

7243. Your reference to the Home Office is that a strongly worded message to the justices explaining that they are not bound to separate, would prevent it?—I think it might prevent a great deal of mischief.

7244. You do your utmost to keep people together?—I do my best, and I find an adjournment and a lecture often does it, and sometimes I see them in my room, or the clerk's room.

7245. Then the only suggestion is that you would give the magistrates power to give a permanent order or temporary order?—Yes.

7246. And possibly only to make a maintenance order?—I also deal in my proof with the suggestion there should be a time limit for desertion.

7247. What is the point there?—The suggestion has been made that there should be a time limit, and no order should be made for desertion unless some time after the actual desertion.

7248. Is it not necessary to provide the maintenance at once?—Of course, if the wife becomes chargeable, the poor law authorities can act by taking proceedings under the Vagrancy Act, which sometimes will bring them together quicker than anything else. Of course, it is disagreeable for a women to go to the poor law guardians, but one has to be careful that a woman does not proceed under this Act in a fit of temper. A man goes away, perhaps, for two days, and when he comes back there is a summons for desertion, and he then goes away again very angry, and there is a complete break-up, which there would not have been. But I think, as we do in Hull, the way is to send somebody round with the woman, and ask the man to take her back, and if he refuses, there is some evidence then of desertion.

7249. Is not that part of the difficulty cleared by the desertion case orders only being made for maintenance?—Yes, but one's jurisdiction is founded on the 1895 Act, and upon there having been desertion.

7250. But it does not follow you need make an order that they live apart?—No, if there is any chance of divorce proceedings—unless it is dangerous to the woman.

7251. But, supposing it is only a question of desertion, is it necessary to go into all these questions as to the Vagrancy Act?—No, I do not know that it is.

7252. I do not see why you want to make an amendment?—No, I think if care is taken not to make an order too hastily, it is all right. But I am sure orders are made too hastily.

7253. Then, it is rather in the working of the Act than the terms of it?—Yes.

7254. Then, you say, "A more general suggestion "has been made, viz., that in every case under the "Act there should be a period of probation before any "order were made absolute." Would you explain what you mean by that?—A suggestion was made that before any order was made absolute, there should be an adjournment before the order came into effect.

7255. Do you see any advantage in that?—No, I do not see any advantage in a period of probation, in cases where the husband has been convicted of an aggravated assault, or an assault on indictment, of desertion, cruelty, or of being an habitual drunkard.

7256. Your point is that there should be delay before rather than after?—Yes.

7257. Then, as to the wife having to leave first?—Yes, there is a difficulty not only with regard to the children, as mentioned by Mr. Atkinson, but where a woman has her own house and furniture.

7258. Then, as to orders against the wife; have you any suggestion as to the extension of the Act of 1895 with regard to that?—No, I think if a man turns his wife out, the justices will not make any serious order; he can turn her out.

7259. And then he will be met by a summons for desertion?—Yes, but the magistrates will not make too high an order. He would have to provide for his wife in any case.

7260. Then the other part of your suggestions deal with suggestions that have been made with regard to probation officers and others?—Yes.

7261. I do not think we need consider all this very much, because this is rather detail of how people of discretion should work the Act rather than any amendment?—Yes, and I have pointed out that no amendment is required.

7261. Then as to publication of reports. What is your view on your experience about that?—I think the full details of these cases are devoured by young people from prurient motives, and it would be very advisable in their interests that only general results should be published. The difficulty is, of course, to enforce that—how it could be done; whether it should be edited by some official of the court; that is almost impossible.

Or whether you should only have the decree and the names of the parties. I think something should be done to stop it. Some papers would stop it, but they cannot because of the other papers.

7263. Then as to the relative position of the sexes?—Well, that is a question I have some diffidence in saying much about, as it is not anything to do with my work. I should like to add something to my proof as a result of what I heard.

7264. Before you add to it, would you tell us your view about that?—I have said that I think the law might be made the same—that misconduct alone ought to be sufficient to give a woman the right.

7265. Then what do you want to add to your proof?—I have seen a suggestion that a distinction might be made between an isolated act of misconduct on the part of a man and a living in adultery, and I want to say I think there are grave difficulties in making such a distinction. I think the discretion might wisely be left to the wife whether or not to act on an isolated instance.

7266. This is a matter of opinion, you say, rather than experience?—Yes. Because she might take action if she would, but probably she would not. I would say, from my knowledge of the working classes, that they would not be very likely to.

7267. Have you met cases where the woman desired to be free when there is only adultery?—No, I think not. All the woman wants is to get her husband back. I have had the most pitiable stories. Women have said they do not mind the husband having a certain woman in the house—much younger and more attractive—but they cannot stand being abused by them. There is extraordinary tolerance.

7268. But you do think that adultery ought to be a ground for divorce?—Yes, I think the law ought to be the same.

(The following is the Table referred to and handed in by the witness.)

THE CITY AND COUNTY OF KINGSTON-UPON-HULL.

Summonses granted.

Year.	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkard.	Aggravated Assault.	Total.
1907	70	44	16	3	—	133
1908	68	40	24	1	—	133
1909	75	31	13	1	—	120
	213	115	53	5	—	386

Orders made.

Year.	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkard.	Aggravated Assault.	Total.
1907	34	21	10	—	5	70
1908	42	27	12	—	1	82
1909	37	12	8	11	3	71
	113	60	30	11	9	223

7269. (*Mr. Spender.*) Did you say that you thought many young people, within your knowledge, had what would be grounds for divorce under the existing law, if they chose to apply?—No, I did not say that, but I said I thought they would very soon make them.

7270. Then you do not think there are any large number actually with grounds for divorce?—I should say there are a good many.

7271. And you think it better not to give them the facilities?—I think it is an exceedingly difficult question. I am certain you could produce chapters and volumes of hard cases, but from what I see of the inner life of unskilled labour in the large towns, I should be quite sure that though it may seem unjust and illogical, the extension and cheapening would have a dangerous effect.

7272. I was not thinking of the hard cases, but that there are many people where the case is not hard; but where if divorce was accessible to them, they would resort to it. You do not wish to equalise the facilities between the rich and the poor?—I realise the difficulty, but I think it would be unfortunate, and though it is illogical to do it to any great extent, I do not think I would resist it being made cheaper in London, or a divorce judge coming down. But if it was made cheap at the very doors of the poorest classes I am afraid it would have a bad effect.

7273. Then do you mean you do not desire that divorce should be multiplied, whether for good or bad causes?—There is no machinery now. There is every in cases under the Summary Jurisdiction Act that the troubles may be smoothed over, while if divorce were made too easy there would be the same ill-assorted marriages which would be less faithfully observed than at present.

7274. Do not you think people may judge for themselves. It looks rather a paternal view?—Yes, I think a magistrate becomes paternal in his views.

7275. And you think a magistrate should be conciliatory?—Yes.

7276. And you would make it as difficult as you could to obtain divorce?—Well, I would not make it too easy.

7277. And you do not see any kind of injustice in there being a difference between the rich and the poor being able to avail themselves of it?—Yes, at the first sight I do, but amongst unskilled labour the unsettling of the youthful marriages makes such a difference.

7278. Do you think it might be met by any change in the law in regard to the marriage of minors?—I think something might be done in that way, but the marriage is a necessity, unfortunately, in most cases, and if they did not marry there would be proceedings under the Bastardy Act.

7279. With regard to reports, have you any experience on which you base your view, or is it only a general opinion?—It is only a general opinion.

7280. It would apply to a great many other things on those general grounds besides matrimonial causes?—Oh, yes, quite as much to the publication of details of other cases. I could give instance after instance where certain disagreeable crimes have taken place, and have been reported, and there has been a recrudescence almost immediately.

7281. You think it is a kind of suggestion when a particular case is reported?—Yes, it is suggested, even down to such things as gilding a sixpence to represent a half-a-sovereign. I remember a case like that.

7282. Do you find reports in your press of undesirable cases?—I think they do not report cases that would do good to report, and very indecent, or bordering on indecent, things are reported. They do not report bastardy cases, or cases under the Criminal Law Amendment Act, but anything between the two, which is called spicy, I think the word is, they report.

7283. But your view would carry you further than divorce cases?—Absolutely.

7284. You would like to have powers which would extend to all cases of that kind?—It would be most desirable.

Adjourned for a short time.

7285. (*Solicitor-General.*) I just want your view about the courts that should have jurisdiction. As I understand your view, it would be desirable to give jurisdiction both to the stipendiary magistrates and to the county court judges?—No, I did not say that. If it is decided that it is necessary or advisable that there should be extension at all, I would first of all prefer that the High Court judge should come down locally if possible; if that is impossible, then I would suggest where there are stipendiaries they should have the jurisdiction, as they act in kindred matters; and where there are no stipendiaries that the county court judges

should have it. I think we stipendiary magistrates understand this class of thing best.

7286. But it would be necessary to have it either in the stipendiaries or the county courts if you want to give the same opportunity to the poor as to the better classes?—It would.

7287. And I understood you to say that you do not think it would be very beneficial to make it cheap and easy?—No.

7288. That I presume is because you do not view divorce favourably?—No, that is not so. There is nothing in the nature of an ecclesiastical position in the matter at all, if you mean that.

7289. Then what is the ground of it?—It is simply the reason that I believe the effect of cheapening and extending would be that the unsettlement amongst the lives of the young married people would be greatly increased, and I think that marriages which are sometimes hastily entered into, and are no doubt very often exceedingly difficult for the first 18 months, become all right later on, and if there was local machinery they would go there at once, and I do not think the King's Proctor would have an opportunity of finding out the collusion.

7290. But that would depend on the grounds of divorce?—I am simply considering the existing law, namely, adultery.

7291. But you are in favour of equalising the sexes?—Absolutely.

7292. Then if you wish to allow divorce to the poorer classes it is essential, is it not, that you should have a local tribunal which would be able to deal with it cheaply and expeditiously?—It would be probably the cheapest and easiest way to have a local tribunal, but I should have thought if it is desired to extend, something might be done by reducing the costs at the High Court, or sending down a High Court judge of the Divorce Division to deal with these cases locally. If neither of these courses is advisable, then I am bound to admit the other, but I am very anxious to avoid such an alternative.

7293. You have said if divorce was made too cheap there would be a general premium on misconduct?—Yes.

7294. I do not quite understand what you mean by that?—Well, the overwhelming majority of cases under the 1895 Act are people married about six months, and in these cases there is a permissive power under the Act, and that prevents a breach of all relations. In the other case there would be nothing to prevent them misconducting themselves by arrangement, and then you would have a divorce and new relations for these already unfit people, and the end would be that the woman would very often go on the streets.

7295. But you would agree if two persons cannot agree it would be better they should be divorced instead of forming—each of them—irregular unions, with the consequence of illegitimate children?—I agree that is a very serious evil, and that is the difficulty of the position. One sees the individual cases, and one cannot shut one's eyes to them, but I think one sees them rather magnified, and I think they are comparatively negligible to the effect there would be amongst young people in the event of facilities.

7296. Is it your experience, in the orders you make, that the parties form irregular unions?—I think they do in some cases, but I am certain that a very large number of them come back together again, whether there has been such irregularity or not, and eventually it is very curious sometimes to find out cases where you would think everything possible had been against the marriage going on, and yet in spite of it all, when there were children, usually the thing has come right in the end.

7297. Have you any idea in your experience of cases that come before you for separation orders of how many of those unions are childless?—I should say there is much more trouble where there are no children; but, unfortunately, there is a great deal of trouble even when there are children.

7298. (*Sir George White.*) May I summarise your evidence, Mr. Halkett, by saying that on the whole you think no amendment of the Act is required?—I do not say that it might not be a fair thing in the interests of the lower-middle classes and the better class of artisans that things should not be a little cheaper than they are in the Divorce Division—that is all. I feel a great difficulty in further cheapening and bringing it to every man's door.

7299. Then, whatever injustice there is in the present arrangement, you would still perpetuate it?—Yes.

7300. But you would remove it for a portion of the working class, but not for the whole?—Yes, I would. There was a time when divorce was only available to the very rich, until the Divorce Act passed. It was illogical then and it is illogical now; I admit that, but the question is, if you are going to carry logic to the extent of undermining the family life of these young people; that is the only thing.

7301. It is hardly a question of logic. If it is necessary for relieving the condition of a skilled artisan of 40*s.* a week, why is it not then necessary to apply the same principle to the labourer of 20*s.* a week?—Because in the better classes marriage is held much more binding than it is in the other classes.

7302. In your evidence you seem to practically draw a line between the morality of the skilled artisan and the unskilled and the labourers?—Yes, to a great extent—roughly.

7303. You would place that on the question of earnings, I suppose?—No, the classification is because of earnings, but the reason for distinction is the different code of public opinion amongst the classes.

7304. But surely in the purely labouring classes who cannot be called skilled artisans, there is as keen a sense of morality as there is amongst artisans?—I only know one large industrial centre well in that respect, but I once had a correspondence with a magistrate in the metropolis, and I learned that things were much better in the metropolis than in the other centres. Having also to deal with people from large centres in the north of England, I think things are rather better in Hull than other places, but my correspondence with the metropolitan magistrate led me to understand that a much better condition of things existed in the metropolis, which is not much borne out by all the evidence before this Commission.

7305. (*Mr. Brierley.*) What is that?—That in the metropolis the marriage tie is much more regarded amongst the unskilled labouring classes than my experience has been.

7306. (*Sir George White.*) Then as to the separation orders, you rather think that the passing of the Act of 1895 has created he demand?—There was the Matrimonial Causes Act before, but this Act has made things more easy and looms larger in the eyes of the people; and anything that enables people to get shut of each other, as they say in Yorkshire, is unfortunate, but if they get to know the permissive character of it I think that would be a great thing.

7307. You think the benefits exceed the disadvantages that you have pointed out?—Oh, greatly.

7308. Apparently you have very strong views as to early marriage being the greatest cause, may I say, of these separation applications?—The greatest number of applications I get are those from the newly-married people, and they are the most frivolous—the least substantial.

7309. (*The Archbishop of York.*) I think you have to deal very largely in Hull with waterside labourers and sailors?—Dockside labourers largely. There is more unskilled labour in Hull than in any other town I know of. I daresay Grimsby is in the same position, but I do not know Grimsby very intimately.

7310. And the character of the large dockside seafaring population is one of considerable instability in every way?—In every way.

7311. In residence, in character, in permanence of obligation of all sorts?—Absolutely.

7312. But you say in Hull, from your experience, as in other similar places, there is a very marked distinction between the public opinion, of the average morality that results from public opinion, between the classes of which you have just been speaking and the artisan

and regular wage-earning man?—A very marked distinction.

7313. And the condition you describe as existing in the former would not obtain in the latter?—No, in fact, I think that class desire extension of divorce facilities less than any other class in the community.

7314. Have you ever heard any requests made or demands made or grievances asserted about cheapening of divorce procedure?—Never once; I have never once heard of it. I know cases, of course, where, if it had been cheaper, it would have been resorted to, but I never heard an expression about it.

7315. You said in your proof, "Can any one who "constantly listens, as I do, to flimsy charges of neglect "to maintain, persistent cruelty, desertion, &c., made by "young wives against their husbands, with—in few cases "—'no appearance' by the defendant, or defended only "as to means—doubt as to what the result would be of "extension" of facilities of divorce. Would you express what you conceive the result would be. Do you mean it would mean the bringing of a great many actions in the court as to which there would be reasonable belief, though perhaps not much actual proof, that there had been connivance between the parties?—Certainly, I mean they take a great deal of trouble by means of these flimsy cases to get a separation order, and if they could get rid of one another, in many cases they would do so, although there is this, that in the separation orders they get something from the husband.

7316. And you would agree, that in a very large number of cases you deal with, by a little persuasion and postponement and management, you can induce these very people to come together again?—Oh, yes, considering the difficulties there are in dealing with that class, it is really wonderful the success there has been.

7317. But you say, if they had been able to procure a divorce on the ground of adultery or cruelty—but certainly adultery—in that class of which you are speaking, there would be very little to prevent them resorting to adultery with a view to obtaining a divorce?—I think in a large number of these cases they would have resorted to it to get divorce.

7318. And would you say in that way a large number of young couples would have been divorced, who have come together again?—Yes, many who have come back again would have been divorced.

7319. I understand from your evidence that you were in favour, as far as possible, of cheapening the procedure of the High Court, whether the High Court remained in London or went on circuit to the provinces?—Certainly, making it appreciably cheaper than it is at present. It seems beyond the range of a class of person who might safely be entrusted with the jurisdiction. That is what I feel about it.

7320. But in order to procure for such poor people as desired to be divorced the advantages of the court, you would be willing that in every possible way the cost should be reduced?—Yes.

7321. And the proceeding simplified?—Absolutely.

7322. Even to the extent of the initial proceedings taking place in the county court?—Certainly.

7323. Might I summarise the evidence which in your great experience you put before the Commission both with regard to the extension and the facilities and the grounds of divorce, in this way—that you feel this is not merely a question of relief of hard cases, but of wide social policy?—Yes, absolutely. It seems to me the relief of hard cases and the good that would be done to them would be nothing compared with the undermining effect of bringing divorce to the doors of the poorer classes.

7324. If you had to deal with the hard cases that come before you, and did not keep before your mind the broad social effect, you would ardently desire a remedy for them?—Absolutely, and I think one has to guard against that, because the hard cases are concrete. One sees them and knows them, and knows the people and the names of the people and all about the people, and the tendency is to judge these questions by hard cases.

7325. But in spite of your sympathy with the knowledge of hard cases, you feel that the extension of grounds and facilities, unless carefully guarded, would have a bad general social effect?—Yes, I am sure of it.

7326. (*Lord Guthrie.*) You said that the extension of the grounds, unless carefully guarded, would have a serious social effect. One quite understands that, but does not that reduce it to the question of how any extension is to be hedged round?—Did I say that, Lord Guthrie?

(*The Archbishop of York.*) I beg your pardon, I asked the question just now. Might I put the question again, if Lord Guthrie would allow me?

7327. Might I take it that any extension of the facilities for divorce, unless carefully guarded, and any extension of the grounds of divorce at all, would have a bad social effect?—I think so.

7328. I rather mean the phrase which I put in the question, "unless carefully guarded," to apply to the facilities rather than the grounds?—The Chairman asked me the very question, and I said that in my opinion I was not qualified to answer it fully from my experience at the court, and what I felt about it was that it was the hard-case argument again, and if you admit it for one case you must for another.

7329. (*Lord Guthrie.*) Take desertion as an illustration. One quite understands that a woman deserted, might, instead of separation, go straight for divorce?—Yes.

7330. Suppose you insist that the desertion must have lasted for four year, and that she must prove that it was not voluntary but malicious?—Yes.

7331. And that there must be evidence before the man who has to decide the case to enable him to test if there is any collusion, would not that make a great difference?—I think it might, but it was one of these points I had not considered in my proof, and, therefore, I would rather not express any opinion.

7332. Tell me this, Mr. Halkett, do you consider it important in all cases, whether separation or divorce, that the parties should be represented by qualified solicitors?—I do, indeed—I feel that very strongly. Of course, in my country—Scotland—this system is adopted, and it would be a great blessing if it were adopted here. I have strained the Poor Prisoners' Act, perhaps, more than any other magistrate has. I have signed certificates for counsel, more than any one else would have done, I think, and this branch of law which is covered by the Act of 1895, it is a very difficult one. Exceedingly nice questions arise as to what is persistent cruelty, and desertion, and so on, and it is hard when you have a capable, fluent, and plausible solicitor on one side, and no one on the other side, to throw one's self into the other side, and see that the party not represented is not a victim, and I would welcome that more than anything else.

7333. And you think any local administration, whether by the High Court judge going down, or the county court, should be accompanied by some system to enable the poor people to be represented by solicitors?—I do, indeed, and I think in many other classes of cases such a provision should be enacted. I think it is most desirable.

7334. I notice in the 1895 Act, clause 10 provides for the court of summary jurisdiction refusing an order in cases which are more fit for the High Court; is that ever done?—Not in the poor places like Hull. I have never had a case yet. The maximum is 2*l.* a week, but if one knew the woman ought to get more than 2*l.* a week, one would act on that section, but I have never done so.

7335. Then section 11 provides for an appeal from refusal to grant an order?—That has never been done.

(*Chairman.*) There have been cases.

7336. (*Lord Guthrie.*) But you have never had them?—No.

(*Chairman.*) I could get statistics if you like. From what I recollect, I daresay there are three or four appeals a month.

(*Witness.*) I have statistics here as to the number of cases where summonses have been granted for

desertion, cruelty, neglect to maintain, habitual drunkenness, and so on.

7337. In your court?—Yes.

7338. Perhaps you will hand those in?—The aggravated assault column of summonses has been omitted because summonses are not usually granted for aggravated assaults—convictions for this merely follow some convictions for assault. There are about 400 in three years—summonses granted—as against 223 orders made.

7339. I gather you are from the sister country where Lord Guthrie comes from?—Yes.

7340. Do you approve of the Scotch law?—The system of procedure?

7341. No, the grounds of divorce?—I have not considered anything except the effect of the one difference that I was asked about, namely, that cruelty and desertion ought not to be necessary to prove against a man. With regard to the other questions which were dealt with in the evidence of Lord Salvesen on Friday, I have not considered them.

7342. Perhaps you will tell me; did you say you approved of the husband and wife being on an equal footing?—Absolutely.

7343. One other main distinction in Scotland is that they allow divorce if there is malicious desertion for four years?—I know they do, and that is a difficulty I felt throughout. I do not deal with it in my proof. I am giving evidence as a police magistrate, and it does not come within my experience as a police magistrate.

7344. Would not it arise in a place like Hull, where seafaring people go to America?—One hears of them going to America, but one does not hear of their not coming back. I have heard of their coming back, but I quite admit it is a very great hardship.

7345. The question is, to what extent does it prevail. Are the cases numerous where people go away and do not come back?—No; the threats of it are very common. One constantly hears, when an order is made, that the man is going to clear out, and he does clear out; he goes to Cardiff, perhaps, or some other seaport, and then turns up again.

7346. Do you know of cases where they have gone to America?—Yes, and the women have said they have not been heard of.

7347. Those cases would be met by the Scotch procedure?—Absolutely.

7348. Why do you suggest that the divorce system should be cheapened at all, seeing the views you express in some respects?—Because I think there is a considerable margin of population to whom it might apply. I am not talking of London; but of the people of Newcastle, Hull, Liverpool, and so on, from which places the travelling expenses to London are so heavy; among these there is a class where the marriage tie is considered binding, and I think there would be no social danger in their going to the Divorce Court. It does not apply so much to the metropolis, but if some cheapening were possible I think it would be a very great thing.

7349. You think at present there are cases where they ought to be able to go the court?—Yes.

(*Chairman.*) We are all very much obliged to you for your evidence, Mr. Halkett.

The following corrected Table has been forwarded by Mr. Halkett as a supplement to his evidence:—

THE CITY AND COUNTY OF KINGSTON-UPON-HULL.

Summonses granted.

Year.	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkard.	Aggravated Assault.*	Total.
1907	70	44	16	3	5	138
1908	68	40	24	1	1	134
1909	75	31	13	1	3	123
	213	115	53	5	9	395

Orders made.

1907	34	21	10	—	5	70
1908	42	27	12	—	1	82
1909	37	12	8	2	3	62
	113	60	30	2	9	214

* Convictions for, following charges of assault.

Mr. LAURENCE MORTON BROWN called and examined.

7350. (*Chairman.*) You are stipendiary magistrate of the City of Birmingham?—I am.

7351. How long have you been there?—I was appointed in July 1905—only four and a half years.

7352. Before that were you anywhere else?—No.

7353. You were at the Bar before that?—Oh, yes, I was Recorder of Tewkesbury for 15 years, and Recorder of Gloucester for five years before my present appointment.

7354. First of all, as to local courts, will you give us your views as to any change with regard to that?—Well, in my opinion it is very desirable that jurisdiction should be conferred upon local courts. Granted the present law as to divorce as it stands by the Act of 1857, the cost of coming to the High Court renders divorce practically impossible to a great many of the working classes of the country, and I think they should have the same opportunity as their wealthier brothers and sisters.

7355. We have had the figures so much about this that I will not trouble you about details; but as an alternative scheme would you recommend the adoption of trial before judges generally down from London, or on assizes, or the county court judges of the district?—Assizes, I think, are held too seldom in the year. In most of the towns civil work is taken twice a year. Some of the larger centres, like Birmingham, Manchester, Liverpool, and Leeds the civil work is taken three times in the year, but that leaves a considerable space of time, and I do not know whether any system like grouping the counties, which was tried and was not successful, would make expense rather heavy.

7356. Then we have heard the objection with regard to the assizes is the rushing of the work?—I am afraid on the Oxford Circuit we did not have such a rush of work. Of course, we joined the Midland Circuit at Birmingham. That is common ground——

7357. That is the big centres?—Yes; and I must say, although there have been complaints occasionally of working people hard when the Long Vacation gets near, still I think the judges try the cases there most carefully.

7358. The alternatives suggested are the assizes, the High Court Judge of the Divorce Division, or the county courts?—Well, I have said in my proof that I consider the county courts present the best courts for the trying of these divorce suits. I should limit the jurisdiction—with regard to damages, I mean. I would not allow the jury to give damages against a co-respondent of upwards of the present amount of the jurisdiction of the county court—namely, 100*l.* I think if any larger sum than 100*l.* could be given as damages against a co-respondent, that co-respondent would be in a position also to pay the costs of an action in the High Court, and therefore I should not allow the damages to exceed 100*l.*

7359. Now you have given us some tables with regard to separation orders in your district?—I should like to add, my Lord, if I might, that if the view is taken that an additional judge is necessary of the Probate, Divorce, and Admiralty Division so as to go circuit, then I think the cases might be got ready to an extent for him. I mean the pleadings, and so on, might be dealt with by the registrar of the Probate

Court in the different centres. There are forty of them, as your Lordship knows far better than I do.

7360. That means proceedings in local registries and trial by a judge coming down?—Yes.

7361. But your preference would be for the county courts?—Yes.

7362. You know the class of case pretty well by your experience?—Yes, I have had a great deal of experience in sitting as a deputy county court judge.

7363. Then what do you say with regard to capacity and competency?—I do not see why a county court judge—who has to try all kinds of issues, without the assistance the judges of the High Court get of counsel who have studied and looked up the cases, sprung upon them; without advocates at all very often the most difficult points of law (they have to try very grave issues of fact)—I do not see why they should not be able to try issues of fact as to aye or no has there been adultery committed; aye or no has there been cruelty—in the words your Lordship put just now: is there such a danger to the life of the woman as to cause her life to be a misery and unfit to live with the husband ——

7364. You do not see the difficulties which some have foreshadowed in this room?—The difficulty of many men, many minds?

7365. Yes?—No, I do not.

7366. I gather you think the issues simple, and that they ought to be dealt with by the tribunal suggested?—I think as simple as a great many of the issues which the learned county court judges try now.

7367. The next point you mention is the separation orders and the table you give in your proof. Perhaps you will allow those to be copied?—Yes.

(*The following is the table handed in and referred to by the witness.*)

Date.	No. of applications.	No. of Orders made.	No. of Orders refused.	No. of Orders varied.	No. of Orders discharged.	No. of Summonses and Warrants for Arrears.	No. of Persons committed to Prison.	No. of Persons paid after committal to Prison.
1907 -	201	164	37	4	6	120	31	1
1908 -	225	179	46	7	4	159	48	4
1909 -	195	144	51	8	4	150	54	2

7368. The population of Birmingham you give as—in 1907, 553,155; in 1908, 558,357; in 1909, 564,859. So that comparing that with the cases you have had, the percentage is very small?—Yes.

7369. Is that the whole number of cases in Birmingham?—We have three courts every day; I sit in one and the ordinary justices in the others.

7370. And these figures are for the whole?—Yes.

7371. The ground of the discharge of the orders in Column 6, which are in one year six, and in the others four each, is the wife's adultery?—Yes, in all cases.

7372. That is to say, those were cases where the wives had obtained orders and then afterwards committed adultery?—Yes.

7373. What is your view now about the effect of separating people?—These figures seem to indicate that on the part of the wife, at any rate, it does not lead in many cases to adultery.

7374. Six, four, and four?—Yes. Take the last year. There were 144 orders made, and there were four orders discharged. It does not, of course, naturally follow that those four orders discharged were made in that year; they might have been made in prior years; but, taking that percentage, it is not a very high one; and I venture to think if the woman commits adultery that the husband would be very desirous of finding it out in order to get rid of the order; and, therefore, I think that those figures may be taken as fairly representative of the adultery on the part of the woman who has succeeded in getting an order.

7375. What inference do you draw from the figures and your experience as to the man's adultery?—I have no positive information on that. You see there is not the same incentive to the woman to ascertain whether he is living in adultery or not.

7376. As long as she gets her money?—Yes. Of course a great many women who have come before me assert—especially when the man is summoned for arrears under his order, and he generally says he is not working, or trade is slack, or something like that—"Oh, but he can afford to keep another woman, "although he cannot afford to keep up my payments." That is—I was going to say—as frequently denied by the man as it is made by the woman, but it is very often denied, and it does not concern me to inquire into the truth of it further than to ascertain whether he has the means to pay.

7377. What general conclusion have you drawn—as far as you are able to draw it?—Well, as far as I am able to draw it—as I say, it is only speculation—I should say that it did lead to adultery on the part of the man.

7378. Then you do, I see, according to what we have heard before, everything you can to bring the parties together if you are able to do so?—I have been very particular about that, and I think it is the custom of all magistrates; I know it is the custom of my clerks—two of them sitting with me—one, three days a week, and the other, two days; and I know we are very careful to try and get the parties together again—at the time very often—or by adjournments.

7379. For the sake of the children?—For the sake of the children; and also by pointing out to them that wages which are quite adequate to keep the home in comparative comfort, when split up, are inadequate for each of the parties.

7380. There are two rents to pay to begin with?—Two rents to pay.

7381. Has your experience led you to form any view as to giving a magistrate a discretionary power as to making the order temporary or permanent; you exercise it partially, I understand, by adjourning the summons?—Yes, a great deal.

7382. Then you have no order on which the wife can operate?—No, but I generally get a promise from the man.

7383. Would it be desirable for the magistrate to say, "This is a case in which I think a six months' "order is enough to begin with"?—I do not think that is much good. I think if you adjourn the case for 28 days, as I do as a rule, if I think the man will give sufficient for his wife meantime, that that has the same effect.

7384. That does not deal with cases of cruelty?—No, it is only cases of desertion.

7385. Desertion is met by merely ordering maintenance?—Yes.

7386. Not ordering separation at all?—That has not been done lately. It was the practice.

7387. And then I called attention to that?—Yes.

7388. But with regard to cruelty?—Well, with regard to cruelty I do not think there would be much good done by a temporary order. A woman stands——

7389. If you adjourn the summons in those cases there is no protection in the meantime?—I very seldom adjourn those.

7390. Would not it be desirable for you to have the power to say, "I make an order for six months, and if "you are not safe after that you can restore the sum-"mons"?—There would be no objection to such a power as that.

7391. You have not got it at present?—We have not got it at present, but the woman stands a great deal

before she comes to the court; she is very loath to come.

7392. You do suggest some amendment; one is that the woman should not be obliged to leave her home in order to get an order in cases where it is necessary?—No.

7393. And then you suggest the police courts should have power to make an order to maintain, on proof of neglect to do so. That is part of the same amendment, is it not?—Yes; I know cases in which the man is rather an idle and dissolute man, and not altogether a good husband, and the wife cannot get him to work or maintain his family; and she starts a little shop and manages to increase her husband's small earnings by this shop; and yet if he is cruel to her she has to leave him ——

7394. Before she can get an order?—Before she can get an order; and leave her little shop, which is absolutely her only hope of maintaining herself and her children; and I think that is a very great hardship on women.

7395. Then you would give power to make the order if they prove neglect of duty, without making them leave?—Yes, and also I think a month is too long a time.

7396. You would make the order operate at once?—Yes.

7397. The next point you deal with in your proof is the publication of reports. What does your experience lead you to say about that?—My experience of the local press in Birmingham is that they are never reported at all. The reporters leave when I get on that class of summons.

7398. Why do they leave when you get on them? Is it personal, or what?—No; because they do not think it is sufficiently interesting to the public to remain.

7399. But this point is rather dealing with divorce cases?—Yes.

7400. Well, what do you say about that?—I do not see how you can prevent the papers from reporting, and I think there may be a slight deterrent influence by the publicity.

7401. You can prevent them being reported by hearing in camera or preventing publication?—Yes; I have said in my proof that perhaps the power of hearing in camera might be extended or exercised in more cases.

7402. Then with regard to amendments of the law, you have expressed some views about those?—Yes.

7403. Do you think any change is desirable in the interests of the wife?—I do. I certainly think there are cases in which the wife should be entitled to relief without proving either cruelty or desertion.

7404. Have you considered the extent to which that should go?—Where a man has a woman living under his protection, or is guilty of repeated acts of adultery, I think she ought to be entitled to relief.

7405. Then you also think hopeless insanity should be a ground for divorce. Have you met with cases in which that matter has been brought to your attention, or is that merely a matter of opinion?—Oh, that is a matter of opinion. I do not know that I ——

7406. Have you ever had applications by people to know if they could get relief?—No.

7407. Then, according to your proof, you consider there should be dissolution on the ground of habitual drunkenness. What are the grounds on which you form that opinion?—Simply that a drunken man is a lazy man, and he is generally a cruel man and very often a dangerous man, and I do not think a woman ought to be obliged to live with a man who chooses to drink.

7408. Would your view, generally, be that if a separation is obtained it should be possible to obtain a divorce, or would you limit it?—Well, for desertion, I should make it for a considerable period; for a period, say, as Lord Guthrie ——

7409. I was not thinking of desertion for a few days or weeks?—Well, into that comes the very big question of—is it better that people, who may be young people, should be separated—permanently separated, and enter into immoral ties, or should they be released from a tie which has proved unsuccessful and form new ones which may lead to happiness and success?

7410. Well, I think you have stated the problem very clearly. Have you any ground which enables you to express a view either way about it?—Well, I am afraid it is hardly a matter for a police magistrate.

7411. I will ask you this, then, with regard to habitual drunkenness. Is your observation confined to the statutory definition, or would you extend it at all? You know the statutory definition?—I know, yes—a person who is not fit to manage himself or his own concerns. But there are two classes of habitual drunkards. There is the man who has drunken bouts—intermittent drunken bouts, who, when he is sober and when he is not on the drink, on one of these bouts, is very often a very good fellow, in every sense of the word; and then there is the man who works and gets drunk on Saturday night always, and very likely again on Sunday. The latter I consider is the more disagreeable person of the two, and from him I should certainly give relief.

7412. I should like to ask you—generally—in a large city, like Birmingham, do you think there are cases existing, or have they been brought to your attention, in which the present state of things with regard to courts and expense has prevented people obtaining divorces who would do so if they could find the money?—They have not been brought to my personal knowledge. And one sees from these figures, and the small percentage of the applications to the court, that Birmingham would not be very largely affected by a local court.

7413. You would not infer that there would be a large number of cases coming in consequence of an extension of opportunity?—No, not judging by these figures which I have given for three years I would not.

7414. As to whether in many of these cases the local divorce court would have been resorted to or not?—I cannot say.

7415. Have you no figures or statistics, or what I may call a general view of the cases, to enable you to say whether it is probable or not that a portion of these would have made claims for divorces if there were the opportunity?—I do not think a very great number would, because they are mostly brought by women, and if they got rid of the husband they would get rid of the maintenance money.

7416. Then you would not see much fear that the extension would produce any real detriment to the locality in a general sense?—No, I do not think I should. There is only one thing I did not put down in my proof, and that is the question of either a man or woman sentenced to penal servitude for a long time.

7417. I was going to ask you that. Have you as a police magistrate formed any definite view as to that, and as having sat as a county court judge?—I think, myself, when a man or a woman is sentenced to seven years penal servitude, or upwards, it ought to entitle the other to a dissolution of the marriage tie.

7418. If they choose?—Oh, yes, if they choose; not *ipso facto*.

7419. What is it that has led you to express that opinion? It is easy to express an opinion, but we want to see the grounds on which we should act?—In the first place, I think a respectable woman or a respectable man ought not to be tied for life to another who has committed so many crimes as to lead to seven years penal servitude, or such a serious crime as to have such a sentence passed on him or her; and any children of the marriage, I think, ought to be taken away from the influence of such a person.

7420. Do you say that, whatever the nature of the crime that led to the sentence is? I mean there might be some crime of cruelty, and others, that might be the result of too active a brain—fraudulent cases, and so on. Do you discriminate between the classes of crimes?—I think it would be almost impossible to do that. Take the case of a big forgery. I do not think the forger who committed such a substantial crime as to merit seven years penal servitude would be a good parent to train up his children on his return from penal servitude.

7421. (*Mr. Brierley.*) I am rather struck by your saying that a woman stands a good deal before she comes to the court. I think you were speaking with reference to cases of cruelty. Do I understand that that is your impression—that most of these applications are not on trivial grounds?—I think so; I think that a woman stands a good deal; and certainly in a great many cases where a woman summonses a man, by the time the summons is heard she wishes it withdrawn.

7422. Yes, but I understood you to say that your experience was that a woman does not summons her husband unless she has substantial grounds. I was wondering whether that was your experience in Birmingham?—Yes, I am afraid it is.

7423. Then in that case, of course, it is necessary that some order should be made for the relief of the wife, either by separation or otherwise?—Yes.

7424. That being so, do you consider it just, or, at any rate, do you consider it expedient, that an opportunity should be given to this woman of releasing herself from the marriage tie rather than submitting to what probably, or possibly, may turn out to be a permanent separation?—Yes.

7425. And it is upon that ground, among others, I suppose, that you think some local jurisdiction is necessary?—Yes.

7426. One other word about the local jurisdiction. I understood you to say that you thought the county court, if the county court were given jurisdiction, should be limited as to the amount of damages. Is that the only limit you would place on that jurisdiction, or would you confine it to people of certain means?—Oh, people who are not worth a certain sum.

7427. With regard to the Act of 1895. I understand you to say that you think an amendment ought to be made to avoid the necessity of the wife leaving the husband. I should like to ask you the question I asked Mr. Atkinson. Do you think any alteration might be made in the enforcement of these orders so as to give the wife a better chance of getting her money; one proposal being to give the magistrate the power to make an order on the employer to pay a portion of the wages to the wife?—I think it would very likely lead to the employer getting rid of the man.

7428. That is what I wanted your opinion upon; you think that might happen?—Yes, I do not think the employer would be bothered with a matter of that kind.

7429. Another suggestion made is that the payment should always be made to some official of the court instead of being made to the wife personally. What do you say to that?—Very often the wives desire that the officer of the court should receive the money, and we always say they do not collect.

7430. But do you say you think it would be desirable that in most cases payment should be made to an officer of the court instead of to the wife?—I think there ought to be power to order it.

7431. There is power to order it already?—Well, we never exercise it. I have ordered it to be paid to a relation.

7432. You can order it to be paid to an officer of the court if you wish?—I never have.

7433. But it has been suggested it would be a very desirable course, and I was wondering whether you had any opinion about that?—I think that might be left as it is.

7434. (*Sir Lewis Dibdin.*) Is it your view that in considering proposed changes in the divorce law we must be on our guard against making divorce too easy?—Yes, I cannot say that I favour divorce at all.

7435. No, I rather gathered from your evidence that that was your view—that divorce was a grave matter that must be dealt with very gravely?—Very gravely. I cannot say that I regard it with any favour.

7436. I gathered that. Now I suppose that the multiplication of the grounds of divorce, however necessary it may be, must have a tendency to make divorce an easier thing in the country?—Yes. But once having admitted the principle, then I say it ought to be within the reach of all.

7437. I quite follow. I think your ground, if I may put it in this way, is, whatever the difficulties of getting divorce are or ought to be, they ought not to be a mere matter of expense?—No.

7438. If a rich man can get a divorce a poor man ought to be able to?—Yes.

7439. But you would view with apprehension a change of general policy which had the effect of making the marriage tie less permanent or less sacred?—Certainly; I look upon the marriage tie as the greatest safeguard of the whole social life of the country.

7440. I think you told the Chairman that, in your view, the proposed changes in the marriage law, or any greater facility in obtaining divorces, would not have very much effect in Birmingham?—I arrived at that conclusion on the figures I have given you of the separation orders that have taken place in the last three years.

7441. In making up one's mind on the general situation, would it not be right to weigh, against the effect of a change in loosening the marriage tie—I mean the question as it affects the whole State—would it not be right to put that against the effect it would have on particular cases in particular neighbourhoods?—Yes.

7442. And if, as was your view, it would produce little effect in Birmingham, so far as Birmingham is concerned, that looks like an argument against making any great change?—Yes, but you must remember I am not consulted by people who want divorces. I think you would get more and better information from those in Birmingham who are in practice there as solicitors, and others. I have nothing to do with the desire of Mrs. A. to get rid of her husband, or Mr. B. to get rid of his wife.

7443. I quite follow; but as far as your experience goes?—Well, I do not think my opinion is worth much on that, because I do not know that it would have much effect.

7444. Now you have had experience, both sitting as a county court judge and as a magistrate. Is it not the fact that the very poor come to the magistrate in all their troubles as a kind of general adviser and friend?—I do not get many applications.

7445. You do not?—No.

7446. That is not your experience at Birmingham?—No.

7447. You know it is so in London, for instance?—Yes, I know it is; I see so from the papers. But in Birmingham I do not suppose I get one application for what you would call advice in a month.

7448. I suppose you become extremely familiar with the habits of the class we are speaking of—the very poor?—Yes.

7449. Do you think a county court judge has the same opportunity of getting to know the social condition of that particular class?—The county court judge of Birmingham sits only in Birmingham (well, one place just outside which has lately been added); and he is continuously sitting there, the same as I am continuously sitting in Birmingham; so he has the same opportunity of getting the knowledge of the poorer classes as I have.

7450. Is it quite the same class that come before the county court judge, and that come before you as a magistrate? Is it not rather the small shop-keeping class, with, of course, their debtors, that frequent the county court, whereas it is the class below that are mostly found in the police court, I suggest?—Yes, I daresay they do get a more respectable class in the county court, sometimes; but they also get, I think, a good many of the same people that come into my court.

7451. I am rather suggesting that the very poor regard the county court really as the place where they have to pay their debts, or where orders are made on them for payment of their debts rather than as a place to get relief?—Yes, they probably do. They do not go before the county court judge at all probably; they admit the debt, and the registrar makes an order for so much a week or a month.

7452. Is it your view that these cases, at any rate divorce cases, cannot be properly dealt with without

the assistance of counsel?—Do you mean counsel in the sense of a barrister, or an advocate—either solicitor or barrister.

7453. I was thinking of the report of the Lord Chancellor's Committee last year, which you may remember said they thought it was important that parties should be represented by counsel, even in undefended cases?—Yes.

7454. I do not know whether you agree with that view in your experience?—I think, of course, that the greatest possible assistance would be given to the tribunal—whatever it be—by solicitors and counsel being allocated to the parties.

7455. It would be some safeguard, would it not, against collusion?—Certainly.

7456. What is your view about divorce cases being tried by juries; ought the parties to have the opportunity of a jury?—That was my view, and that was what I said.

7457. You have said so in your proof?—Yes.

7458. You have had experience, I dare say, of county court juries?—Yes.

7459. Do you regard them as a suitable tribunal for this purpose?—Yes, I had a good many juries. They did not very often summon a jury when I was acting for eight months continuously in one circuit; but where I did have juries I was sitting either in Gloucester or Cheltenham with juries, and I think at Tewkesbury, and they were very good men—quite capable of dealing with divorce cases, I should say.

7460. As to the grounds for divorce, have you come across cases often where there has been a conviction and penal servitude, and the present law has worked hardly, and there ought to have been a divorce. Have you seen such cases when practising?—Well, I know a case in which I defended a man; he got five years penal servitude, and his wife worked most loyally to support the family and welcomed him when he was allowed to come out, and I believe he is in respectable employment and they are living happily.

7461. Well, in that case it would have been deplorable for there to have been a divorce?—Yes, but there would not be necessarily a divorce.

7462. Quite; but I want to know if you have heard of any case where there should have been a divorce?—No, I simply base it on the hardship—if you are going to untie the marriage tie at all—of being tied up like that.

7463. Now is there not great difficulty in the definition of hopeless insanity?—Very great.

7464. And you would not allow divorce in cases of hopeless insanity?—Hopeless insanity, cases of what are known as general paralysis.

7465. Would you allow it in cases of general paralysis?—Of the brain.

7466. But in other cases of general paralysis?—No I meant general paralysis of the brain

7467. But in other cases of general paralysis, would you allow it then?—No, I do not think so.

7468. Does it not strike you the line of demarcation is getting very narrow between a case of hopeless paralysis, where the afflicted person is lying like a log, and a case of hopeless insanity from paralysis of the brain?—The line is very thin, but in the one case the brain paralytic has to be confined in an asylum right away from his wife.

7469. But the purpose of marriage is equally impossible in both cases?—Yes, I know; but there is still the power for them to live together. I mean under the same roof.

7470. (*Lord Guthrie.*) I suppose there is the practical distinction in the two cases, that in the case of a man divorcing his wife for paralysis he would be outlawed from all decent society?—Yes.

7471. In the case of a man divorcing his wife for hopeless insanity the mass of people would think him justified?—Yes, that is so, my Lord. I think when a man or a woman has taken the other for better or worse, and illness has overtaken the one, I should have thought it was the duty of the other to shield and nurse them; I mean physical illness.

7472. Mr. Halkett made the observation that the overwhelming majority of separations were within the first six months of marriage. What is your experience?—Certainly not that. I do get a good many young people who have been married, say, in a good many cases, under two years; I cannot tell you the proportion, because I have really never worked it out at all. But, on the other hand, I get older people. There is one case that is always coming into my court on arrears, under an order, where the woman I should think is 65 and the man 72.

7473. Have you local barristers in Birmingham?—Yes.

7474. About how many—a score?—Oh, yes; more than that.

7475. (*Chairman.*) A very strong bar?—Yes.

7476. (*Lord Guthrie.*) Would there be any difficulty in devising a system under which, in undefended cases of divorce, the societies should appoint barristers and and solicitors to act?—None whatever. There is really quite a strong bar there.

7477. Under section 7 of the 1895 Act there is power to apply to, "alter, vary, or discharge any such order," which apparently refers to all the orders under section 5, namely, separation, custody of children, maintenance, and costs orders. In point of fact, do you ever have applications to vary a separation order?—No.

7478. Why not?—The applications to vary generally are either by the wife, on the ground that the husband is in a better position than when the order was made, or by the husband to have the order varied in consequence of his being in a poorer position.

7479. Or a custody of children order, I suppose; you would have applications to vary that?—Very seldom.

7480. Well, why are not these applications by the wife or husband on the ground that their habits have changed for the better, and to vary the order of separation?—I do not quite follow your Lordship.

7481. If section 7 allows any such order to be altered, varied, or discharged, why are there never applications on the part of one of the spouses to discharge the order for separation on the ground that his objectionable habits have now disappeared?—Such as habitual drunkenness?

7482. Yes?—Because they do not disappear, I am afraid.

7483. But we know there are cases of reform?—Yes, there are.

7484. But you have never seen such an application?—No, I never have. I mean, I think that is the reason in these cases. Of course, I am not saying it is hopeless there should be reform, but I say in these cases it is not so as a rule.

7485. (*Mrs. Tennant.*) I want to ask a question or an answer you gave to Mr. Brierley. You thought if the same power existed here to attach the wages of a husband, that exists in Scotland, it might jeopardise his employment. I can see it might, though some employers might enter into the case and try and help the wife. Do not you feel the knowledge on the part of the husband that his work might be jeopardised would have a very wholesome influence in making him pay his wife?—You see, if the employer was applied to he might, with the great choice of men he has now, say, "I will have a man that I will not have this trouble "about—to pay so much to his wife, and the balance "to him; I will get rid of this man, and I can easily "fill his place."

7486. I can quite see that, but my point is, do not you think the husband's knowledge that his employer might take that view might save the application to the employer, and make him pay when he otherwise would not?—That would not be the effect of a garnishee order on the wages; the order would have to be made in the court on his wages and served on his employer, and then the employer might say, "I am not going to "be bothered with this man; I will get rid of him."

7487. And knowing that all this might happen, and his employment be jeopardised, might not he pay before the order?—I do not think he would; because if the order was served on the employer, the employer would have to stop the wages.

7488. But he now knows what is open to his wife is a warrant, under which he may be arrested and sent to prison; she knows that will not secure the money, and therefore she will go without obtaining that warrant sometimes. In these circumstances she would feel it would operate quite differently on her husband if his employment were jeapordised; therefore, the knowledge that such a power existed in the wife's hands might make the husband pay when otherwise he would not pay?—But, as I understand, Mr. Brierley's suggestion was that the order of the court should be that so much should be stopped—served on the employer to stop so much of his wages each week. If that is so, it would not be an incentive to the man to pay.

7489. But the power to make the order might be an incentive?—Well, I really do not think employers would be bothered with a man where they had to split up his wages between him and his wife.

7490. We have not any figures yet as to how it works in Scotland, as the Act has been of short duration there, but it is the law in Scotland?—And you do not know what the result is?

(*Mrs. Tennant.*) We do not know yet what the result is.

7491. (*The Archbishop of York.*) Just one question as to what you said about habitual drunkenness as being a ground for divorce. You make a distinction which has not always been made between a person who is grossly, and constantly, and outrageously drunken and a person who has bouts, lasting perhaps for different times, and from which he recovers; or similarly in the case of the wife. Would not there be a difficulty under your suggestions that very often the wife or the man might apply, after one of these bouts, and obtain a divorce, whereas if things had gone on what had happened before might happen again, but then you would have to find out what intervals had elapsed between this last particular bout, on which this application was made, and the one previously, and so on. I suppose, in such cases, it would be easy to prove that the bouts had been constant, and what would bulk in the mind of the court would be the bouts, and not the long intervals of a fairly contented existence?—Yes, it might be so; but I think there is a great distinction between the two classes of drunkards—one who is in the habit of getting drunk and the other who is habitually drunk.

7492. Is it not true that there is difficulty in discovering what is an habitual drunkard?—It is, of course.

7493. So that difficulty would not be lessened with regard to the very important matter of divorce?—No, it would not. I think I say in my proof that I have a difficulty in defining what habital drunkenness is.

7494. That is what I ventured to ask?—Yes.

7495. (*The Earl of Derby.*) In your official capacity have you come across cases where a man's home has been broken up by his wife being a drunkard?—Yes.

7496. Is effectually broken up; and may it be in the opposite way—where the husband has deserted the wife?—Yes, one case I have in my mind now—a most respectable man—a guard on the railway, and he had home after home practically broken up by his wife pawning everything for drink.

7497. What legal relief can he get?—He can get a separation order.

7498. He can get a separation order?—Yes, under the Licensing Act, 1902.

7499. But there are cases also where the woman is not a drunkard, but a vile temper, and nagging, and generally managing to make the man's home miserable. We have had cases where she was jealous and pursued him to the works?—Yes.

7500. Well, that is breaking up a man's home, is it not?—It is a very unpleasant life for him.

7501. If you saw men and women put on equality from the point of view of adultery, would you see him put on terms of equality, and for the man to get a separation order against the wife, as a woman can against her husband now, on the ground of cruelty?—Your question is rather incompatibility of temper or temperament.

7502. Well, I think a woman can break up a home as easily as a man, pawning things and so on?—I have found when I have tried to bring them together in court that perhaps after 10 minutes or a quarter of an hour's good work, when one thought one was on the eve of success, some nasty remark was made, generally by the woman, and all that good work was undone.

7503. Would not you say, where a man does have his home broken up by her pawning his clothes and pursuing him to the works, that he should have power of legally separating himself by a separation, even if there is no adultery. Of course he would have to allow her maintenance; but that he should be able to prevent her entering his home?—Do you mean by divorce?

7504. No, by separation?—No, I do not think I would do that.

7505. He has got to grin and bear it?—I am afraid he cannot use any stronger means than grinning, otherwise he might find himself in my court.

7506. (*Chairman.*) I want to ask one question. You expressed—if I may say so—very properly, your great desire to maintain the sanctity of the marriage tie?—Yes.

7507. Do you think that is really maintained by any order that permanently separates the husband and wife. The tie is almost in the air, one may say, then, and there is no actual married life at all?—No, I do not think it is, but, as I say, if once you admit the principle of the Act of 1857, then I think it would be better that the parties should be released, and that it should be within the compass of everybody's purse.

7508. Released only on grounds that exist —— ?—Released on grounds that exist, and on the extended grounds which I have already dealt with.

7509. That means, in your view, that permanent separation without dissolution of the tie is not an advisable thing?—In my opinion permanent separation without dissolution of the tie leads to immorality.

7510. (*The Archbishop of York.*) Might I ask one question, and only one. You said so often, "granted the principle of 1857." Would you be prepared to say you regretted the adoption of the principles of the Act of 1857?—That is rather more from the religious question.

7511. That is a question very much before us, Mr. Morton Brown, and I should like your opinion?—No, I think I should answer that in the negative; I do not regret.

7512. (*Chairman.*) You do not regret?—I do not regret the passing of that Act and the powers it gives.

7513. (*The Archbishop of York.*) With some hesitation?—With consideration, I will say.

7514. With hesitation, I will say?—I substitute consideration; I had to consider before I answered.

(*Chairman.*) Thank you very much, Mr. Morton Brown.

Mr. JOSEPH SMITH called and examined.

7515. (*Lord Guthrie.*) You are stipendiary magistrate in the borough of Grimsby?—Yes.

7516. How long have you been so?—Since the year 1905.

7517. What is your population?—It is now estimated at 70,000.

7518. And it is increasing?—It is increasing rapidly.

7519. Chiefly connected with fishing?—Chiefly.

7520. Have you a table showing the applications made under the 1895 Act for 1906, 1907, 1908 and 1909?—Yes, they vary from 36 to 41.

7521. It is pretty stationary, is it not?—It is stationary, more or less.

7522. And you show the different grounds of the applications under the five heads of desertion, cruelty, neglect to maintain, habitual drunkenness, and aggravated assault, in each year, I think?—Yes.

7523. Do you show under that head, taking 1907, cases where cohabitation was resumed and where it was not?—That is so.

7524. These seem to have varied a good deal?—The operation of coming together has gone on further in the 1906 cases than in the later cases. The proof which you have was compiled from the information in the hands of the police at the time it was compiled; since then, I have made further inquiries, and I now find that the process of the coming together of the parties has gone on further, and, at the present time, out of 32 orders which were made in the year 1906, the parties have come together in 23, leaving nine. In one of the remaining nine a divorce was obtained, and in the remaining cases into all of which I have inquired, either in consequence of the generally dissolute character of both parties or for some other reason, I doubt whether there is a single case in which local divorce jurisdiction, if it had existed, would have been likely to have been used.

7525. Can you account for two of the causes not being availed of to any extent, namely, neglect to maintain and habitual drunkenness. Neglect to maintain in 1906 is one order and in 1907 none, and in 1908 one and in 1909 five. It is only in 1909 that it comes into practical operation really?—Neglect to maintain?

7526. Yes. Is there any reason for that?—I cannot give any reason for that; I do not know why that is.

7527. Then, with regard to habitual drunkenness, that has been almost a dead letter?—There is only one case, and that was by the husband in respect of the habitual drunkenness of his wife.

7528. Is that due to the difficulty of proving habitual drunkenness? I mean, have you had a number of applications that have failed?—No, I have had no applications; it may be that these cases fall under one of the other heads; it may be that cases of habitual drunkenness can be brought under the head of cruelty.

7529. But, substantially, the causes that are availed of are desertion and cruelty?—Desertion and cruelty are the two chief causes.

7530. Do you find that drunkenness, apart from habitual drunkenness, is a general element in these matrimonial cases?—It frequently occurs in these matrimonial cases. In nearly all cases of cruelty there is a certain amount of drunkenness with the cruelty.

7531. And would you expect, if the habits of the people improved in that way, that the number of the cases would be diminished?—I should, to some extent; but there is another matter that comes in in that respect, and that is that nearly all these cases of cruelty have some foundation because of some unhappiness caused by one thing or another in the family life.

7532. Jealousy?—Jealousy; but more frequently I find financial troubles.

7533. Extravagance on the part of the wife?—Extravagance on the part of the wife.

7534. In cases before you, Mr. Smith, does the element of adultery come up at all?—It is frequently introduced as a defence by the husband, but there is always a great difficulty with regard to it because the husband has never any good evidence of it; and that is one of the great distinctions, I think, between cases of adultery in the poorer classes and cases amongst the richer classes; the evidence is so different. In the richer classes the evidence is very frequently that of detectives, and servants, and hotel keepers, and people of that class. There is nothing of that kind in the life of the poorer classes. The evidence generally brought forward by the man is that he has seen his wife talking at the street corner with another man, or at a passage end, or drinking at a public house with him, or something of that kind. And then there is the frequent case of a lodger, where there is a man on the premises, but there is no substantial proof of misconduct.

7535. Due to that cause, as well as in other conditions, you have questions of difficulty frequently arising?—*Very difficult questions those are; in fact, where there is a great suspicion in many of the cases, I could not hold there was any actual proof.*

So far as the question of separation orders is concerned, does the element of collusion come in to be considered?—Not frequently.

7537. Does it ever come in at all?—I do not remember any case.

7538. What kind of cases would it come into?—I have had a few cases in which I have perhaps suspected collusion, and for that reason I always insist on the whole case being gone into.

7539. What sort of case would it be? Are not they always at daggers drawn?—Yes; well, it is very rare.

7540. You give us on page 3, out of 14 cases in 1906 in which parties are still apart, how many are due to the misconduct of the wife?—I have already said as to that the numbers should be 23 and 9 instead of 18 and 14.

7541. Have you given us the details sufficiently of that second paragraph of page 3? Is there anything you want to add to that?

7542. (*Mr. Brierley.*) The numbers must be different if that is to be read as 9 instead of 14?—Yes, that paragraph would require to be altered. That was the state of affairs when 14 cases were still apart.

7543. (*Lord Guthrie.*) Now, what do you say as to the effect of separation orders on the question of immorality amongst the separated?—Would you mind, one moment, as to the concluding paragraph? With reference to cases of aggravated assault, there are ten of those cases, and no less than nine of those have come together, and I believe they were all cases of jealousy on the part of the man because of the adultery of his wife—men who felt very strongly on that matter who have thereupon committed those assaults.

7544. Supposing in those cases the order had been temporary?—Yes, that might be so; but I am afraid as the case came before the court at first those would have been just the cases in which one would have felt that the temporary order was of no use as the facts at the time seemed to be so very bad.

7545. But would the proportion of such comings together not be greater if you had a system of temporary orders?—I do not think they would be greater. I think the parties would be rather inclined to look forward to some time at the end of the order instead of simply having to think of coming together again.

7546. Has your experience been as favourable as Mr. Morton Brown's with regard to the success of reconciliation attempts?—I find they are successful particularly in the case of the younger couples.

7547. I mean attempts by you?—Yes, I always do my best to bring them together again. My experience as to the age at which these applications are made is not the same as Mr. Halkett's, but resembles Mr. Morton Brown's. There are a certain number of young couples, and I find these are generally the cases that are most easily brought together; but the more usual cases are those of people who have lived together longer; and I had a similar experience to the last witness; I had one where two people of nearly 80 could not agree. I persuaded them to go home and make it up; but I heard afterwards it was no use; they each had gone away to their respective relatives.

7548. What had been the ground of the trouble?—I think it was a case of the old man having been very cruel to his wife.

7549. Have you a police missionary?—I have a probation officer and also a court missionary.

7550. Are they useful?—I have known several cases in which the court missionary has been useful. In fact it is the constant practice to adjourn the case for one or two days and ask the court missionary to see the parties, and in several cases he has been successful. His last report spoke of two cases where he had been successful and the two parties were living happily together.

7551. We have heard there are cases where a mere maintenance order should be made without a separation order. What do you say to that in your experience?—Well, I say the maintenance order is, of course, the most substantial part of the order—the one that the applicant wants; but if there is not a separation order there must be some order to prevent the husband molesting the wife until cohabitation is resumed.

7552. Cases of cruelty?—Cases of cruelty certainly.

7553. In cases of desertion is it your practice to grant separation orders?—I believe separation orders are granted in all these cases.

7554. Is not there a variety of practice, then, amongst the stipendiary magistrates in that matter?—Well, I really am not aware of the practice of the other stipendiary magistrates in that matter; it is a matter my attention has not been called to until recently, and I shall have to look into it in future, I think.

7555. But if it is a fact, as one witness said, that in desertion cases he does not grant a separation order, that is not your practice?—That has not been my practice. It must be borne in mind that in desertion cases it does not always mean that the man has gone far away from the wife. It is his way of carrying on the quarrel. A typical case of this kind is where the wife is giving financial trouble, to whom the husband as a rule hands over the whole of his wages, or nearly the whole. They all do that whether they are bad husbands or good husbands. The difference between the bad husband and the good husband is that the good husband only wants a shilling or two back, and the bad husband keeps coming till he gets it all nearly. Well, in a case of that kind the wife has had the money and spends it on other objects than housekeeping, and so allows bills to accumulate, until one day the husband, who suspects nothing of the kind, becomes aware of this only at a time when he is in danger of being imprisoned under the orders of the county court for neglecting to pay instalments on these debts. That leads to trouble which culminates in the husband leaving the wife frequently. In Grimsby the population is a fishing one, and he takes his bag of clothing and goes off to sea and when he comes back goes to lodgings or something of the kind.

7556. What do you say as to the tendency of these separation orders to lead to immorality?—Well, I do not think they do lead to immorality. In fact, I think the contrary is the case. Where an order is made it is of great importance to the wife to be of good conduct, because the maintenance money would be forfeited by misconduct on her part; and a very close watch is kept on her by the husband and the husband's relatives, who are only too glad to seize any opportunity of getting rid of the maintenance payments. The consequence is that the wives lead a respectable life, and they supplement the maintenance money by their own earnings. If the wives have not the order, they would be either compelled to appeal to the poor law, which they are loath to do, or they would have to seek another way to avoid starvation.

7557. In how many cases is there this cancelling of the orders by the husband on the ground of the wife's adultery?—The numbers are not great; only some two or three in the course of the year.

7558. And you think that if the cause had existed, in most cases the application would be made?—I think so.

7559. On account of the watch you have told us about?—Yes.

7560. Then you tell us on this head that, out of 234 persons as to whom 117 orders were made in four years, 1906 to 1910, only 10 wives and six husbands, including one husband convicted of bigamy, are known to have been living with other persons?—Yes.

7561. Is that an exhaustive inquiry that we can rely upon?—I think there were very few cases in which people could not be found. I think it is an exhaustive inquiry and a correct result. The population of Grimsby being 70,000 the place is not so large but that the police are more in touch with people than they would be in a larger place.

7562. Then as to the proposal to confer jurisdiction on the county court. You are not in favour of that?—I am not in favour of that.

7563. Why?—Do you mean the divorce jurisdiction?—There are two branches of that; jurisdiction over the separation orders and the question of conferring divorce jurisdiction.

7564. Well, take divorce jurisdiction first?—I am not in favour of the divorce jurisdiction being exercised by a local county court; I should prefer that it should be exercised by the High Court in London or some branch of it. I think it should be remembered that to the poorer people the county court, although we know very important jurisdiction has been conferred upon it by more or less recent legislation, is the court to which they have always been in the habit of going with respect to their debts. Their experience of it is that they meet the debt collector there, and a gentleman who says they must pay one shilling a month or that they must be committed to prison for non-payment, and also in transacting business of that kind, I am afraid they would consider it rather venial to use deception, or try to cover debts up, and I do not think they have the kind of respect for the county court—this is entirely a matter apart from the judges and their qualifications—but the court itself, which it is desirable that they should have for a court having jurisdiction in divorce; I do not think they have a very great respect for it.

7565. Then, so far as the country is concerned, on the question of public policy are there two objections: first, that there is much greater risk of collusion not being detected; and, secondly, that it would make it too ready a means for people severing the marriage tie?—Yes, I think there are those objections. I do not think it should be too easy.

7566. Now, take the first; with regard to the danger of collusion. Let us assume that the county court judges are quite competent if they are properly assisted. Would you consider it a satisfactory system, on that assumption that you would have divorce proceedings carried out before them without the assistance of barristers?—I do not think I would draw a distinction between barristers and other professional guidance.

7567. Well, without professional guidance. Do you attach great importance to that?—I think they would require professional guidance, because without that they would have very great difficulty in finding out any reasonable evidence to bring before the court. That which they consider evidence is not evidence.

7568. Do you see any difficulties in large centres at all events in having solicitors appointed year by year to represent the poor?—I do not see any difficulty in that, if you first come to the conclusion that the large centres should be used as centres for divorce proceedings.

7569. Suppose you had local administration approved of, would you prefer large centres rather than every locality with a county court?—Certainly. Judging between the two I should prefer large centres. I do not think every county court should have jurisdiction.

7570. Suppose you had local administration approved of, would you prefer a High Court judge to go down from London?—I should prefer a High Court judge. As far as the provinces go, apart from the large towns, people of the country have a great respect for what they call a "red judge"—a High Court judge.

7571. What do you think of the intermediate proposal with regard to having the preliminaries prepared by the county court judge, and the evidence taken in London before the High Court judge, who is to decide the case?—I think it would possibly be a good thing that some preliminary investigation should take place, because it would weed out a certain number of cases where money would be wasted in taking them to London, when they would have no result there.

7572. You would not approve of the evidence being taken before the county court judge, and reported to the High Court judge who had not seen the witness?—No.

7573. And of course you would be against any procedure by way of affidavit in such a matter?—That would not be a good procedure.

The following are the tables referred to and handed in by the witness:—

The number of applications made under the Summary Jurisdiction (Married Women) Act, 1895, for the years 1906, 1907, 1908, and 1909, and their sub-

sequent history, as far as is known, appears from the following table:—

—	Applications for Orders.	Withdrawn.	Dismissed.	Orders for Separation and Maintenance.	Commitals for non-payment of Maintenance.	Cohabitation resumed.	Cohabitation not resumed, Dead or unknown.
1906 -	41	6	3	32	6	23	9
1907 -	36	10	2	24	4	14	10
1908 -	38	7	1	30	7	7	23
1909 -	41	7	3	31	2	9	22
Total for 4 years	156	30	9	117	19	53	64

The different grounds on which the orders were made appear in the following table:—

—	Orders.	Resumed Cohabitation.	Cohabitation not resumed, dead or unknown.
1906.			
Desertion - - -	20	14	6
Cruelty - - -	8	5	3
Neglect to maintain -	1	1	—
Habitual drunkenness	—	—	—
Aggravated assault -	3	3	—
	32	23	9
1907.			
Desertion - - -	10	5	5
Cruelty - - -	10	5	5
Neglect to maintain -	—	—	—
Habitual drunkenness	1	1	—
Aggravated assault -	3	3	—
	24	14	10
1908.			
Desertion - - -	21	3	18
Cruelty - - -	6	3	3
Neglect to maintain -	1	—	1
Habitual drunkenness	—	—	—
Aggravated assault -	2	1	1
	30	7	23
1909.			
Desertion - - -	14	2	12
Cruelty - - -	9	4	5
Neglect to maintain -	5	1	4
Habitual drunkenness	1	—	1
Aggravated assault -	2	2	—
	31	9	22

7574. (*Mr. Brierley.*) I understand your objection to the county court having jurisdiction is that you think it would make people think a divorce too much a matter of course?—Yes, make it too easy.

7575. In what respect?—Well, as an every day thing. I draw a distinction between cheap and easy.

7576. You mean they might shrink from proceeding before a High Court Judge, whereas they would think nothing of going before a county court judge?—Yes, they would run to it if that jurisdiction existed, and I think in many cases, where these statistics show the parties have come together happily, if there had been that cheap local divorce jurisdiction existing, the parties, before the anger of their quarrel had abated, would have had recourse to that, and they would have been unnecessarily divorced.

7577. If, in the case of their proceeding in the county court, large centres were arranged, I suppose it would be a very serious matter for many of these persons from the point of view of expense, would it not?—The parties are mostly very poor, and they would find it difficult.

7578. I mean there would still be that bar to thoughtless, precipitous proceedings, would there not?—Yes, but I should think it quite possible that a wife who desired to proceed in that way would be able to induce somebody to take up her case if she had a good case.

7579. But that would give time, at any rate, and place for consideration and thought, before she did take proceedings, would it not?—It would take some little time when these quarrels arose before they settled down again. I do not at all agree that three weeks is the time in which they come together. From six to twelve months is much nearer it.

7580. One question as to these figures. They seem to be very small in the case of neglect to maintain?—Yes.

7581. Is not the reason this, that in most cases of neglect to maintain there is evidence of cruelty?—I think, possibly, that is so.

7582. And that you would advise a summons to be taken on the ground of cruelty, as being an easier matter to prove?—I think that is one of the explanations.

7583. And given cruelty and neglect to maintain, it is easier to prove cruelty than wilful neglect, especially at a time when employment is rather slack?—I agree to that; I think it is very likely the case, that cases that might have come under the head of neglect to maintain have been taken under the head of cruelty.

7584. And it is difficult to show whether neglect to maintain is wilful or inevitable sometimes?—It is.

7585. Is not that possibly the explanation of those figures?—Yes, I think it is very likely that is the case.

7586. (*Sir Lewis Dibdin.*) You have told us that in four years you find 10 cases of aggravated assault in which separation orders have been made, and that in nine out of those the parties have been reconciled and are living together again?—That is so.

7587. I suppose if divorce had been obtainable on the large grounds suggested, those would all have been cases of divorce, would they not, or might have been?—That would depend on the grounds. On the enlarged grounds they would have been.

7588. I think you said adultery was present in most of them?—I did not say adultery was proved in most of them. I said, from the fact of their having gone together, and the inquiries I had made, that I had from making those inquiries very little doubt that the misconduct of the wife was the cause.

7589. Therefore it is not unreasonable to surmise that if the grounds of divorce were widened those would have been—or, at any rate, many of them—cases where if a divorce could have been got in a summary way, there would have been divorce?—Does not that come to this: that if the grounds of divorce had been widened to include those cases, those cases would have been within the grounds of divorce.

7390. And if the parties had applied for divorce they would have got it?—Well, very likely.

7591. They were cases of aggravated assault where you had reason to suspect misconduct?—Yes.

7592. It is obvious, is it not, that it would have been a deplorable thing if divorce had been granted in those cases?—I agree that is so, as the facts have turned out.

7593. Therefore that is a remarkable illustration of the good of divorce not being too readily obtainable?—I think so.

7594. Now, you told Lord Guthrie why you thought a county court was not a suitable tribunal to exercise divorce jurisdiction proper; but I think you also think it is not a right tribunal to exercise the jurisdiction in separation orders?—Yes, I think it would be a very inconvenient tribunal for that purpose, for several reasons.

7595. The first of them is the readiness with which the parties were advised in the magistrate's court?—That is so; there is no doubt that is a great advantage. As far as I am acquainted with the county court office procedure, no advice would be tendered there. Going into a county court office is like going into a post office; you see certain people behind a counter who give you certain papers for certain money and so on; whereas if you go to the clerk in a police court he is generally very willing to give advice on law and fact.

7596. And are not the very poor accustomed to look at the police court and the police court magistrate as the natural place and the natural person to advise them?—That is so; and if there is no police magistrate they frequently go to the clerk of the justices, and that gives the magistrate and justices' clerks influence with the class we are speaking of.

7597. And also it gives them great experience of their habits, does it not?—Yes, I would agree.

7598. And those are important factors that are not present in the county court?—Those are certainly absent in the county court.

7599. Then, I suppose, the cheapness is an important factor. The proceedings in the police court cost almost nothing?—They cost nothing. In fact the wife is destitute in such cases, and it is often the practice to grant a summons without any money at all. The wife has no money and cannot make a payment, and I suppose in the county court the benefit of the Act would be denied for want of producing the necessary fee.

7600. And the difference in expense between the police court and the county court is much the same as between the county court and the High Court?—Yes, the difference between nothing and something is very much the same as between something and something more.

7601. Then you also think the magistrate's court a more convenient tribunal for this purpose, on the ground of its more frequent sittings, than the county court?—Very much more. The idea of the county court as a fixed and easily accessible local court is not quite correct, because it is a circuit court, and any cases not reached on a particular day at a particular place have to be adjourned for a month, and sometimes two months. In the small towns the sittings of the county courts are very short; but at the large places, the work is carried on under great stress. I do not mean such large places as Birmingham, where the sittings of the county court are very frequent. In Grimsby the majority of the defendants in separation cases are engaged in the fishing industry, and the practice is to fix the hearing for a day when the husband will be ashore, and both parties are heard; but in the county court, with its monthly sessions, a man would have to remain ashore and lose his work for a voyage, that is for, perhaps, 21 days, and then find the case sent to the next court; and in most cases the woman would be destitute.

7602. That seems to be clear with reference to courts like yours, but the difficulty pressing on the minds of some of us is with reference to the petty sessions in the county. Have you any suggestion to make with regard to this separation order jurisdiction in the county districts, where it is at present administered in the ordinary petty sessions court of unpaid justices?—I have rather a higher idea of the administration of justice in those petty sessional courts than is generally entertained, and I have no suggestion to make except that more stringent instructions might be issued from the Home Office as to the treatment of these cases; and particularly that every case should actually be heard, and the witnesses heard in it, and that it should not be taken from the parties or from their representatives that an agreement had been entered into, and an order made simply on an announcement of an agreement.

7603. (*Mrs. Tennant.*) You spoke of the nine cases, Mr. Smith, you have had of aggravated assault?—Yes.

7604. Those would hardly have been cases which would have justified an appeal on the part of the wife for divorce, would they?—Not as the law at present stands.

7605. But on extended grounds would they? Because even if adultery were included as a sufficient cause by itself, the adultery would be the wife's own adultery?—They would not.

7606. And therefore the appeal could not come from her side?—That is so.

7607. But unless the husband wished to obtain a divorce those separation cases could not be taken as potential divorce cases?—No.

(*Sir Lewis Dibdin.*) But it is proposed to abolish recrimination, and then you have cruelty on the one side and adultery on the other.

(*Mrs. Tennant.*) That is, if you are making cruelty alone a cause for divorce.

(*Sir Lewis Dibdin.*) Yes, aggravated cruelty.

(*Mrs. Tennant.*) Yes, only if you were making that alone a cause for divorce.

(*Witness.*) I should like to say, speaking generally, in those aggravated assault cases the husbands were mostly, apart from the assault, quite respectable men; but in the tenth case I remember the man, and he was one of the greatest brutes I ever came across, and the parties have not come together.

7608. Then you have no reason to believe that the husbands would have applied for divorce against their wives?—No, I think not. In a case like that the man takes his vengeance in his own way. Similarly, if a wife finds another woman has been tampering with her husband the instinct of these people is that the wife would chastise the other woman. I had a case last week for that reason. The wife had assaulted another woman, and had given her a sound thrashing, and I may say I thoroughly sympathised. The wife does not want a divorce; she wants to keep her husband.

7609. One other question only, on the ground of jurisdiction. You attach considerable importance, I gather, to the position which a summary jurisdiction court now occupies as a place in which the poor seek advice?—I have not a great number of applications for advice; I have a certain number—one or two perhaps every court day. But I do not quite follow the question.

7610. I gather you are distinguishing the relation of the county court to the poor, from the relation of the court of summary jurisdiction to the poor?—Yes.

7611. And you think the county court would not be so good a court for hearing those causes as the summary jurisdiction court, on that ground?—That is my view; the county court is a hard, busy, pushing, commercial court, which has to do with debts and ascertains whether people owe one another money, and the way they should pay it; and as far as my experience goes of the county court—and I have had about 25 years of the rough-and-tumble of it—it is nothing like the court of humanity that the ordinary police court is, particularly since remedial methods by means of probation officers and court missionarins have been so largely adopted in late years in the police court.

7612. It has been given to us in evidence that since the Workmen's Compensation Act, the county court does occupy to an extent the position of adviser; and I think one or two county court judges said they were asked for advice as to how the money should be spent which a woman gets because of the death of her husband. There is a question whether she should spend the money on a little shop or in some other way, and it is part of the duty of the county court judge to advise how it should be devoted?—I did not know county court judges were consulted as to how it should be devoted, and when I sat as deputy county court judge and those applications have been made, they have been always cut-and-dried beforehand by the solicitor for the woman who has come to me, with a scheme of so much for the child to be apprenticed, and so much for a shop for the woman, and so on.

7613. I ask the question because it has been stated to us, particularly by one county court judge, that he gained very intimate knowledge of the parties in that way, and I particularly asked him if he thought other county court judges were in a similar position?—I am

not quite familiar with this practice, but there may be county court judges who may take great interest in these matters, and may be asked for advice and give advice willingly; but I think, taking the county court all round, as far as I have known it, very little of that sort of thing goes on. There is too much business in the county court.

* 7614. If you were satisfied that the county court judges did come closely into touch with the people in that sense, would it modify your view as to their capability in matrimonial causes?—If the character of the court were entirely changed, and people got to have a great respect for it, it would make a difference, but I could not go further than that.

7615. (*Lord Guthrie.*) Have you been a county court judge yourself?—I have sat as deputy county court judge on several occasions.

7616. And seen the working of it?—Yes.

Adjourned until to-morrow morning at 10.30.

Winchester House, St. James's Square, London, S.W.

TWELFTH DAY.

Tuesday, 15th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*,

(*Chairman.*) Before we proceed with the evidence, I want to deal with a formal matter. I will ask the Secretary, Mr. Barnes, to produce the last report from the Under Secretary of State for Foreign Affairs as to the return to the inquiry on Press Publications which now comes from Norway. Sir Arthur Herbert sends the memorandum, with a formal letter, on Norwegian Regulations, &c., regarding the publication in the Press of reports on matrimonial and divorce causes. "No special regulations exist regarding such publication. In this country divorces are, as a rule, granted "by Royal license. According to the rescript of "August 19th, 1735, cfr., the High Court of Law of "September 12th, 1818, paragraph 8, civil cases in "general are, however, subject to the rule that the "trials are to be held with closed doors if the matter "can give rise to scandal or offence. In paragraph 11 "of the new Law of August 20th, 1909, regarding "facilities for the dissolution of marriages"—that is the code we had put in a few days ago by Lord Salvesen, which he kindly offered to translate—"it is "also stated that trials of such cases shall always be "held with closed doors. A further rule exists with "regard to all civil cases, according to which none "but persons concerned shall have access to the "documents. In the second section of paragraph 128 "in the Bill regarding courts of justice, which has "this year been laid before the Storthing, it is determined that trials of matrimonial causes (*i.e.*, causes "dealing with the invalidity, the continuance or the "dissolution of marriages) shall be held with closed "doors. Paragraph 131 also contains the following "rule: 'If a trial is held with closed doors and the "'Court shall consider it advisable that the proceedings "'or any portion of them should, for special reasons, "'be kept secret until further notice, or altogether "'the Court shall enjoin those present to this effect.'" It is interesting to have all these codes. That will be put with the rest.

Mr. THEODORE WILFRED FRY called and examined.

7617. (*Chairman.*) You are the stipendiary magistrate of Middlesborough?—Yes.

7618. How long have you filled that position?—Two years.

7619. Before that what was your position?—I was a member of the North Eastern Circuit, and practised on circuit.

7620. Have you any figures which show what the total number of applications in the court at Middlesborough are in the course of a year under the Act of 1895? In your proof you say: In the year 1908 the court at Middlesborough granted 75 summonses and made 45 orders, and in 1900—I do not know why you take 1900—I see it is going back to 1900—90 summonses were granted and 54 orders were made?—It should be 1909; it is a mistake.

7621. You go on to say—I am taking the experience of your court—"When it is pointed out that nearly "400 people, mostly women, make applications or "complaints against their husbands at this court "every year, it will be seen that summonses are not "granted, nor orders made, in every trivial case; but "that in many cases differences are composed and "parties reconciled." The 400 applications are reduced by considering whether they should be granted; during the one year it was 75, and during the other it was 90?—Yes, that is so. The figure of 400 is not quite accurate, but it is between 350 and 400.

7622. A great number come with what you consider frivolous applications, and on consideration, you either persuade them not to press them, or refuse them, and it reduces the number to the figure you have mentioned?—Yes, or they are referred to the police court missionary, or somebody visits them.

7623. That shows the kind of work that comes before your court?—Yes.

7624. I pause for a moment to ask what is the view your experience leads you to take about the possibility of people in the class of life that come before you obtaining divorce decrees?—I hear so very little of that, because the people who come before me do not mention infidelity in those cases; they know I have no power to deal with it, so that I see very little of it. In other matters I occasionally come across very hard

cases—I cannot tell how numerous they are—where poverty or want of means prevents a man or woman getting a divorce.

7625. You mention that four or five such cases have recently been reported to you, one being a case where the husband is living in the same street as the wife he has deserted, cohabiting with another woman?—That is within the last year. I have heard of five or six cases; I cannot say I visited the woman, but it has come under my knowledge in court.

7626. In that case had she obtained a separation order on the ground of desertion?—Yes.

7627. That did not give her the freedom that might be desirable?—No.

7628. What funds did you find could be raised in that case?—She had some friends, and I was told by a solicitor that 5*l.* or 10*l.* would not have prevented her getting relief, but 40*l.*, 50*l.* or 60*l.* was out of the question.

7629. She could possibly raise 5*l.* or 10*l.*?—Yes.

7630. That agrees with other evidence we have had. That was a case in which there were grounds for a divorce decree proveable?—They were not proved before me, but I do not think there is any doubt about it. I have complete confidence in the solicitor who told me. It came before me in another way.

7631. Do you think those cases are common?—I could not form an idea. I do not hear much of them. They exist, no doubt.

7632. You say if the local courts were entrusted with jurisdiction you would prefer that they should not be courts of summary jurisdiction?—Not as at present constituted.

7633. Will you tell us why you have formed that view?—Because I find in these particular cases I never get the assistance of counsel or solicitors, which I do in other cases, and it is very hard to get a case properly put before you. People often do not know when and where they were married, and I do not think I could deal with those cases. It would be too great a responsibility, unless the people had either counsel or solicitors.

7634. You think it wants a more formal proceeding altogether?—It must have it; it wants professional services.

7635. Is the time of your court taken up very much now with these cases?—It would be if there were many divorce cases not put in proper form. They come in such a muddle sometimes, and they do not know anything.

7636. You do your best as a peacemaker, no doubt?—Yes, but I am afraid of collusion. They attempt to get collusive separation orders, and without professional assistance. I am afraid it would be the same if divorce jurisdiction were conferred on the court.

7637. Are the proceedings before the magistrate of an informal character?—Particularly with this class of cases.

7638. Will you explain that?—Yes. A woman comes and tells a story of cruelty, which I think I can believe to a certain extent without much corroboration, of which she does not realise the necessity. She is very vague, and cannot tell me where she was married; she is ignorant of the name of the church; she says it is 10 or 12 years ago. I have great difficulty in having the marriage proved. The husband says, and it is a common answer, "I have never struck her or ill-treated "her, but I want to get rid of her and pay her "10*s.* a week." They think I can make a separation agreement. It is very difficult to get at the true facts.

7639. That would lead to the suggestion that these matters want more formal dealing with than would be the case in courts of summary jurisdiction?—I am sure they do, very careful dealing indeed, if it comes to divorce.

7640. I think that more or less covers what you say in the next part of your proof. These parties mostly do these summonses themselves?—Yes. Sometimes the plaintiff has a solicitor, and then things are better, but I have never seen a defendant represented, or hardly ever having professional assistance, although in other cases they continually are represented both by solicitor and counsel. The husband is hardly ever represented.

7641. You summarise it at the end of your note by saying they seem to have the idea that the plaintiff should take out a summons and leave it to the magistrate to do the rest?—They do in these cases. They do not understand the necessity of proof.

7642. What do the weekly wages average about in your district?—I could not tell you, but they get very high wages in the district: 35*s.* and 2*l.* is not out of the way, and there is a class of highly paid workmen in the shipyard who get 5*l.* and 6*l.* a week in full work, and there are steel smelters who may get 10*l.* or 12*l.* a week.

7643. You say in your proof, "Such people, I "observe, employ legal assistance in the county court, "but they regard the police court as a place where all "disputes should be settled quickly and cheaply." What has led you to that conclusion?—These people often have trouble in the county courts, and they employ a solicitor at once; but the police court they look upon as a much more friendly place. They go freely to the chief constable for advice, and then they come to me, and they think that is the place where things are done quickly and sensibly; they do not look upon it as a legal place so much.

7644. You refer to the fact that outside London, many of such applications would be heard by justices at petty sessions. Do you think that would be satisfactory, to give increased jurisdiction there?—It is difficult to say. I have a certain amount of experience. I think some benches of justices are competent to do this kind of thing, those who have experience, but I think it would be a jurisdiction I might hesitate to give to the petty sessional division.

7645. What is your view about retaining before justices in petty sessions the separation order system; is that satisfactory?—The little experience I have is at Middlesborough, where the county bench sits; it is satisfactory there, but what it is over the country I do not know.

7646. You would not like to go into that?—No I do not know what their work is.

7647. You say if any suggestion were made to confer such jurisdiction upon courts of quarter sessions you would have an observation to make about that?—Yes. I find that quarter sessions is a very good court for its own purpose, but I do not think it would be for this purpose; they are rather anxious to finish their work in a day or two. The jurors come in Yorkshire from long distances all over the county; they are farmers and want to get away. I do not think it would be a good court for that jurisdiction.

7648. It is rather hurried?—Yes, and they are not the right class of juror.

7649. Have they any staff?—No, I do not think so. They have not the staff we have in our stipendiary courts, and they have no connections, such as missionaries and workers. Quarter sessions are not used to that sort of work.

7650. If a local court were suggested, your view is that it should be the county court, I gather?—I feel a great difficulty about that. I do not feel I could honestly, from what I know, recommend any court.

7651. I said, "if a local court"?—I think the stipendiaries' court is the court which has had experience in matrimonial causes, but I do not think it is fit to deal with divorces as at present constituted. I should be reluctant to do it unless I had a jury and professional assistance, and I do not think the county court is regarded in the same way as the stipendiary court. They dislike the county court, and I do not think it has the staff or the connection to deal with matrimonial causes in a big town. I am only speaking for Middlesborough, of course.

7652. Do you consider if local jurisdiction in divorce were given, that the number of applications would be great?—I think it is very speculative, but I think that is the danger, certainly at first. I beg your pardon—you mean if the grounds for divorce remain the same as they are now?

7653. Yes?—I do not apprehend any very great increase, but I do not know; it is quite speculative.

7654. On these points you consider your views are not valuable?—I do not think they are of much value.

7655. Do you think it would be desirable that the separation order power should be taken away and confined to maintenance in cases of desertion?—I think, sometimes, where a woman is afraid of her husband molesting her, it might be useful.

7656. I am speaking of desertion?—As a matter of fact since a recent case, I do not think we make an order for separation.

7657. Practically, that is in operation now?—Yes.

7658. The other point is, supposing it was left as it is with regard to cruelty, that is power to grant a separation order; do you think any advantage would be obtained by giving the magistrate a discretion to make the order for a time, to begin with?—I see no harm. I do not know whether there would be any particular gain. People often come back again as it is.

7659. You are not able to form any definite opinion?—No. I do not see anything much to be gained; there may be something.

7660. In these cases of cruelty do you find they are sometimes of a very grave kind?—Yes; they are quite horrible sometimes—dreadful.

7661. Do you get cases in which you can reasonably conclude the parties never can live together again?—One would think so; but they do go back in spite of it.

7662. In 1909 you convicted 15 people of aggravated assaults upon their wives, and you say that the injuries inflicted are often very dreadful. Do you think those were cases in which the permanent order for separation might be converted into a divorce?—I feel great difficulty in answering that question, it raises so many other considerations. If you are going to get divorce for cruelty, it is enlarging the boundaries for divorce which I am not in favour of. They are dreadfully injured sometimes, and I do not know what is to be gained by a woman living with a man who has treated her like that; but they do go back in the most extraordinary way. I have a case of a man I know quite well who has been convicted 29 times of crimes of violence; he has been convicted of seven common assaults and one aggravated assault on women, five times for aggravated assaults on his wife who has had four separation orders in 1894, 1897, 1899, and 1909, and they are living together at this moment.

7663. For how long you can hardly say?—No; it is one of the cases where he treats her terribly badly, but when sober he is a good husband.

7664. Do you think it right to have an option to end that entirely?—I think so, apart from the big question; the moral question of divorce generally.

7665. You have under your control or direction organisations for missionaries, probation officers, and so on, and you have these people to give you their knowledge of the people?—Yes.

7666. They do help to bring about settlements of these cases?—Yes, very much. I am very dependent on them.

7667. You think that is a useful assistance to the magistrates, but might not be so useful in a county court?—I could not get on without them, I think.

7668. Could they not be of assistance to county courts?—If they had their organisation there, but they always attend my court; they are there every day.

7669. You make a suggestion about payments being ordered by courts of summary jurisdiction, that an officer of the court should receive them or a third person on behalf of the wife. Do you think that would be useful?—I am very anxious that that should be done. I see a great deal of trouble. I have frequent assaults which arise out of women collecting their money, and often women go back to their husbands because they cannot get their money. I have some figures with regard to separation orders made last year. In 23 out of 45 cases, or 50 per cent., the women have gone back to their husbands; but the police inform me that 16 of those women are still being ill-treated by their husbands. They have gone back because they cannot get their money. It is not an infrequent thing for the husband to knock the woman down.

7670. How many have gone back?—23 out of 45, and 16 out of those the police inform me are being ill-treated now. They could not get their money and were afraid to go for it.

7671. Would that be remedied by payment to an officer of the court?—The police tell me they are not officers of the court, but I do not know how that may be.

7672. I mean an official properly constituted?—Yes. They will not do it; it is not the practice, and they cannot undertake it without an intimation from the Home Office.

7673. I am speaking now of the remedy. You think it would be a good thing that husbands should be required to pay to a third person, so as not to make it necessary for the wife to see her husband personally?—It would be invaluable. I have known a whole street fight arising out of one of these collections.

7674. A collection by the wife?—Yes, accompanied by her relations.

7675. It was suggested that that gave an opportunity of a reconciliation. Does your experience lead you to think that would be so? It is suggested if the husband is approached by the wife to get money, that there is, therefore, an opportunity of seeing each other and being reconciled?—From what I know of those interviews they are generally of a very stormy character, but they do go together on economic grounds, sometimes because the husband will not pay the wife.

7676. They seem to be forced to go back because they cannot get the money in the cases you put?—That does happen again and again. I have dreadful people before me. I have one man with 72 convictions for violence (he is only just over 30 years of age), 23 for common assaults, 12 for other crimes of violence, and 3 for aggravated assaults on women. A woman cannot collect money from that sort of man; it is not safe. Intimations that he had to pay to the police which I have given in two or three cases have been attended to. I have two or three bad cases in which the worst characters pay to the police, but it is done by the chief constable in his own time as a kindness to me.

7677. It has been suggested it might be an advantage if the magistrate could make an order which would have the effect of garnisheeing wages in the hands of the employers. What have you to say about that, if anything?—I cannot say whether the employer would object, because I have not asked the big employers. It could easily be ascertained. I think very likely they would not object. They do pay things for workmen sometimes; they are very kind and advance money.

7678. That would depend on the employer very much?—Yes, there are two or three very big employers in my district who account for many thousands of working men.

7679. Would you recommend that as a suggestion to be adopted?—I think it is a reasonable suggestion. I think it is a threat you might hold over the workman in case you have that difficulty.

7680. (*The Archbishop of York.*) Do you find many of the more highly-paid steel workers and artisans in the shipbuilding yards coming before you in these cases, or are they mainly confined to the casual labour class?—I think they are mainly confined to the casual labour class. I do occasionally have a highly-paid workman, but I think the police court population is mainly from the lower class.

7681. You have said already that you found great difficulty in deciding whether applications for separation orders were collusive or quasi-collusive?—Yes, that is so.

7682. Do you think the difficulty of detecting such collusive or quasi-collusive applications would be as great if applications for divorce were brought before local tribunals?—I think that would be so.

7683. In your proof you say that you suppose in no class of case is it more difficult to decide questions of fact. You would not agree that even in regard to separation orders it was always a mere question of fact which could very easily be decided?—No; I think they are cases of very great difficulty.

7684. And presumably, in cases of applications for divorce, still more if the grounds of divorce were enlarged, it would be still less your opinion that these were matters of fact to be easily decided?—No, I think they would be cases of very great difficulty indeed.

7685. I think you agree with what we have heard from others, that one of the most extraordinary features of social life in the class you deal with, is the way in which, for one reason or another, women who have been badly treated by their husbands come together again?—Yes, they do go back; again and again they go back.

7686. There seems to be some affection, or force of custom, or some other strange cause that operates more strongly than even the remembrance of blows and words?—I think so. I think there is also the economic pressure on both parties, which no doubt affects them.

7687. You spoke of the value to you in your work of the police court missionaries in dealing with these matrimonial troubles. Would you say you regarded them as of great importance in dealing with the class that mainly applies for separation orders?—I think it would be impossible now for me to get on without them. I think they are invaluable.

7688. Do you think they are a class of people who would be likely to give us valuable information about the habits and ways of that class of people?—I think they know much more about it than I do.

7689. You said, in answer to a question from the Chairman about extending the grounds of divorce, that you would rather express no opinion, but you are in favour of the option of divorce in cases of aggravated cruelty, although you said you made that answer apart from the bigger question of divorce generally. May we gather from that, in the interests of the working classes, you greatly fear the consequences of any large extension of either the grounds or facilities of divorce, apart from particular cases such as we have heard?—Yes, I think I should, but I do see some very hard cases sometimes, terribly hard cases. On the whole, I am very nervous about any general extension of divorce. I think they regard the marriage tie so lightly, some of them. I should hesitate to enlarge it, but I feel unable to express an opinion because I see such hard cases of women who are tied to men, who cannot get relief, and I feel in a difficult position. It is a very difficult question.

7690. (*Mrs. Tennant.*) Do you think it would be an improvement if the maintenance order dated after a week had elapsed rather than after a month had elapsed for its enforcement?—I have not considered it, but I think that would be a good suggestion.

7691. (*Lord Guthrie.*) You have mentioned collusive separation orders. How does collusion enter into the matter—in what cases?—Perhaps it was rather an unfortunate term, but I do not know how to express it. They expect me to give a separation by agreement without proving the case. The man says, "I have never "struck her; this tale of cruelty is untrue, but I want "to be rid of her, and I will agree to give her 10*s.* a "week," and they feel aggrieved because I will not make the separation order. Perhaps the wife has not begun by proving her case very strongly.

7692. Are these cases where you think that there is no cruelty, or merely that there is a difficulty in legal proof?—I think the cruelty is rather doubtful, to begin with, on the wife's story; the man denies it, and there is no witness on either side. It is not a case where I am justified in making an order. They say, "Why will you not separate us?"

7693. You mean they have invented cruelty that did not exist?—The wife has exaggerated the cruelty, with the consent of the husband, because they want to get away.

7694. Does collusion only come in in cases of cruelty?—I have never had it except in cases of cruelty, but they not infrequently do it.

7695. In your experience does the question of drink enter largely into these difficulties?—Yes, very largely.

7696. Practically always in cruelty cases?—Yes.

7697. And in very few desertion cases?—I have never had a suggestion of infidelity made in my court in 800 cases in two years. It may exist, but it is always cruelty.

7698. Any such suggestion would not be gone into?—It would not be relevant, but the husband might state it as a defence; for instance he says, "I struck her as the "tea was not ready." He never gives infidelity as a reason.

7699. In what case would infidelity be relevant in the original application?—Not in the original application, but in the defence he always gives some other reason.

7700. You said "apart from the bigger question." Did you mean to include in that both the question of public policy and also the scriptural question?—Yes, I mean if you were going into every question.

7701. You told us you had two or three employers of several thousand men, and you thought you might find out whether they had any objection to make payments direct to the women. Would you do so?—I would do so.

7702. Would you send a note to the Secretary on the subject?—Yes, I should be pleased to.*

7703. In regard to the question of the difficulty of deciding such cases, it is just the ordinary difficulty, there is no special difficulty arising from the kind of question?—I meant it arose from a lack of preparation of the case.

7704. Inadequate preparation?—Yes.

7705. If you had the assistance of solicitors it would be prepared, and would be just the ordinary problem?—There would be no more difficulty than in any other case.

7706. Combining the usual qualities of common sense and experience?—I meant the case as prepared and brought before me.

7707. (*Judge Tindal Atkinson.*) Do you agree that, to the poorer classes of the country, who cannot get relief in matrimonial cases, facilities should be given?—I think they are handicapped by their poverty.

7708. In your opinion facilities should be given to them?—Certainly.

7709. In your experionce you have had cases in which it is clear that the people should have had those facilites granted in their particular cases?—Yes, I have had those cases.

7710. The question of difficulty in dealing with the facts, as you have said to Lord Guthrie, arises from not having sufficient legal assistance before you?—Yes.

7711. Is it in the cases of cruelty that the difficulty arises, or of desertion?—In both.

7712. Do you not suppose that the county court judge would be competent to deal with the facts which would arise in an ordinary judicial separation or separation order?—Yes, perfectly.

7713. Under the Act of 1895, I daresay you are aware that there may arise all the questions of fact which arise in a divorce suit?—Yes.

7714. You see no reason for the county court judge not being competent to deal with those questions?—They would be perfectly competent.

7715. With regard to collusion, when a case is before a judge or a stipendiary magistrate, it is impossible to detect collusion if the parties suppress the facts. That must be the subject of inquiry?—Yes, I think so.

7716. There was one rather strange thing you stated in your evidence about the staff of the county courts. I daresay before you were a stipendiary you practised in the county court?—Sometimes, but I admit I have not a large experience.

7717. I daresay you know sufficient to be aware that, certainly in the larger towns and in a great many of the smaller ones, there is a staff headed by a competent solicitor as a registrar, and sufficient clerks for the purpose of carrying on the work?—Yes.

7718. Would not that staff be sufficient to deal with these small cases that would come before the courts?—Yes. I meant a charitable staff; I meant before they come into court. I did not mean to cast the slightest reflection on the official staff.

* The witness sent some documents, which were confidential, to the Commissioners.—H. G. B.

7719. With regard to dealing with the cases, they have a sufficient staff?—Yes. I meant the charitable helpers who see the people before they come into court.

7720. I understand from you if facilities are to be given, practically the only courts that can deal with them are the county courts?—I think, as at present constituted, they are the best.

7721. And practically the only tribunal to bring it within the reach of poor people?—Immediately.

7722. (*Sir Lewis Dibdin.*) As at present constituted?—I cannot help thinking that we could do it if we had a little alteration in our procedure.

7723. (*Judge Tindal Atkinson.*) There are 550 county court towns in England; will you take it from me?—Yes.

7724. They all have a staff, and none of the residents of the district reside a greater distance from the court than 10 miles. Would not that show that great facilities would be given if jurisdiction were given to county courts?—Yes, I think so. I did not mean the staff of the county court was not competent to deal with them.

7725. If you had to select your tribunal, is there any other tribunal except the county courts who could take these cases?—We could if we had the cases properly prepared.

7726. Before the stipendiary, I agree, but that would involve the appointment of more stipendiaries over the kingdom?—I do not suggest any objection to that course.

7727. (*Mr. Brierley.*) Whether any extended facilities for granting divorce were granted to any other local court or not, do you think it practicable that the courts of summary jurisdiction should be deprived of their present power of granting separations?—I think it would be a pity to deprive the stipendiary's court of its present jurisdiction in these matters.

7728. I suggest to you that the great majority of cases that come before the courts of summary jurisdiction are such as are not really fitted for divorce, and in which the parties would not require divorce?—I think so; I cannot tell. I never hear infidelity suggested to me.

7729. In the great majority of cases speed is very essential, quickness of being dealt with?—Speed, and a daily sitting, or something like a daily sitting.

7730. You would suggest, even assuming any local jurisdiction in divorce were granted to any court, that still the present powers of the magistrates should be retained?—Yes.

7731. Alongside with those powers of divorce?—Certainly.

7732. Just one question about paying the money to an officer of the court. I understand you do not do that in your court; you do not pay the maintenance money to any officer of the court?—No, because we have not any officer of the court on whom the duties are cast.

7733. You have the clerk to the magistrates, and in some towns the money is ordered to be paid to the clerk to the magistrates, and is paid by him to the wife?—Perhaps my circumstances are peculiar.

7734. All you require is that some small amendment should be made in the Act so that it would be clear the police were included in the term "officer of the court"?—I think an intimation from the Home Office that it was one of the duties of the police would be sufficient. It might mean an extra officer, but I think the police are willing to do it.

7735. It has been suggested that the officer of the court to whom the money is paid should have the power of enforcing the order. Have you formed any opinion as to the desirability of that? At present the wife alone can enforce the order. Have you formed any opinion as to whether it would be desirable that the officer of the court should have that power?—No, I am afraid I have not considered that. I do not see any difficulty in the wife enforcing the order. She has only to come to the police court.

7736. There is one advantage, namely, that she is the person who knows the circumstances of the husband best?—Yes. I think it might lead rather to a feeling of oppression if the same officer came round and collected the money.

7737. It might lessen her chances of getting the money?—Yes, I think it might.

7738. (*Judge Tindal Atkinson.*) There is one question I should like to ask. I do not know whether it has occurred to you, perhaps it has not, but would it be useful if the magistrate had powers to transfer the order for the payment of money into the county court, so that it could be enforced by the judge? In that case the man would be bound to pay the money into the county court office, and the officer of the court would enforce its payment?—I do not think it would matter who enforced the payment, as long as it was enforced.

7739. Another advantage would be the court could attach the wages due to the workman from the master?—I do not think it matters who pays as long as the wife has not to get money.

7740. I want to know whether you think it would be a useful procedure that the magistrate should have the power to transfer the order for payment to the county courts, to be enforced in the same way as the orders and judgments of the county court are enforced?—I cannot help thinking the police are the best people. They are anxious to keep on good terms with the police, and would pay them without any question.

7741. (*Chairman.*) In answer to one of the Commissioners, you said you had had dreadfully hard cases—that was your expression—in which divorces might be required, although they could not at present be obtained. Will you tell us what sort of cases you refer to under the term "dreadfully hard cases"? What is in your mind?—I was thinking of long terms of penal servitude and of criminal insanity, which are very hard. I had a case the other day where a woman had been married two or three months, and her husband became entangled with another woman without the knowledge of the wife, who was a very nice person. He had a quarrel with the woman with whom he was entangled, and beat her to death. I sent him to the assizes. There was a certain amount of insanity in his family, and he was not sentenced to be hanged; he has gone to Broadmoor, and may be there 40 years. This woman is 22 years of age, and is most respectable; she has been married two or three months to this man, and no divorce is possible for her. It seems to me, knowing the case and the family, a very hard case.

7742. Is that typical of a certain class you have met with?—I do not know whether it is typical, but it is a case which occurred, and one feels it is very hard, because there is no relief possible for that woman now, and if divorce was extended, one cannot help thinking cases of criminal insanity ought to have consideration.

7743. Are there any children in that case?—No.

(*Sir Lewis Dibdin.*) They had been married two or three months.

(*Chairman.*) Still there might be.

7744. (*The Archbishop of York.*) If there were insanity in the family, and they were only married two or three months, might it not be possible to prove the man was insane when he was married?—That is so, but it would be difficult to prove. I was surprised at the view the jury took. I think they took a merciful view.

7745. (*Chairman.*) There would be a difference, no doubt, between insanity which prevented you knowing, and probably contracting marriage and insanity calculated to produce violence afterwards. That is what you mean?—Yes. That case seems very hard. I do not think it is frequent, but it is a very sad case. Then there are cases of long terms of penal servitude.

7746. What is the woman able to do in that case? Is she a poor person?—I think at present she is living with her parents, but I think she is anxious to find work, and I think work will be found for her. She is a young, nice pleasant woman, and it seems a hard case.

7747. Have you had any cases of an analogous character, where it is merely crime and not insanity?—I have had cases where one has been bound to send men to penal servitude for 7 or 10 years, where one feels that it is hard on the wife, where the wife was not

aware of the character of the husband. I have known where a woman has waited 7 or 10 years for a husband, and has been a good and faithful wife, and is now making a home for him. I know a case where a man served 10 years penal servitude and they are living together happily, but there are cases where the woman might not be willing to do so, where she was married a short time without knowing the man's character.

7748. Which was bad at the time of marriage, but not known, you mean?—Yes.

Mr. Bertram Charles Brough called and examined.

7749. (*Chairman.*) Are you the stipendiary magistrate of the Staffordshire potteries district?—Yes.

7750. How long have you been so?—Only one year.

7751. What were you before that?—I had sat in the district for some years as deputy stipendiary, and for some years as deputy county court judge of the same district when required, and I had a large professional practice as a barrister in the district.

7752. On the Oxford circuit?—Yes.

7753. That joins the Midland circuit at Birmingham?—Yes.

7754. Do they both go to Staffordshire?—No, only the Oxford circuit.

7755. The first thing I should like to ask you is, have you been good enough to prepare some statistics of the separation orders that have been applied for and made at your courts? I believe you have only just handed them to us?—Yes.

Staffordshire Potteries Stipendiary District.

County Borough.	Municipal Boroughs.	Urban Districts.	Rural Districts.
Hanley	Burslem Longton Stoke-upon-Trent.	Fenton Tunstall Kidsgrove Smallthorne Wolstanton Part of Audley.	Stoke-on-Trent. Part of Stone. Part of Leek. Part of Cheadle.

Summary Jurisdiction (Married Women) Act, 1895.

(Became operative January 1st, 1896.)

Applications for Orders.

Year.	Desertion.	Persistent Cruelty.	Neglect to Maintain.	After Conviction for aggravated Assault.	Habitual Drunkards.	To vary or discharge Order.	Total.
1896	52	28	7	8	—	3	98
1897	40	20	4	7	—	3	74
1898	30	19	1	7	—	2	59
1899	40	19	7	4	—	4	74
1900	29	28	5	3	—	5	70
1901*	26	19	7	4	—	1	57
1902	27	19	5	3	—	—	54
1903	36	5	5	3	5	2	56
1904	24	9	2	2	1	2	40
1905	20	14	3	2	3	3	45
1906	22	4	3	2	—	1	32
1907	19	12	4	3	1	1	40
1908	31	20	3	—	5	3	62
1909	28	27	2	—	4	5	66
Total	424	243	58	48	19	35	827

* Burslem and Stoke Borough Courts commenced.

Summary Jurisdiction (Married Women) Act, 1895.

Result of Applications for Orders.

Year.	Orders made.								Dismissed, &c.			
	Desertion.	Persistent Cruelty.	Neglect to Maintain.	After Conviction for aggravated Assault.	Habitual Drunkard.	Varied.	Discharged on ground of Adultery.	Total.	Dismissed.	Withdrawn.	No Appearance.	Total.
1896	29	11	5	8	—	—	2	55	17	1	25	43
1897	22	6	1	7	—	1	2	39	19	—	16	35
1898	13	7	—	7	—	—	—	27	15	5	12	32
1899	18	6	3	4	—	—	3	34	20	11	9	40
1900	13	7	3	3	—	1	3	30	16	14	10	40
1901	14	8	6	4	—	1	—	33	14	4	6	24
1902	16	10	5	3	—	—	—	34	10	2	8	20
1903	21	3	1	3	1	1	1	31	10	9	6	25
1904	14	8	1	2	—	1	1	27	8	1	4	13
1905	12	7	2	2	2	2	—	27	5	5	8	18
1906	14	3	2	2	—	—	—	21	4	1	6	11
1907	12	4	1	3	—	—	1	21	5	3	11	19
1908	13	10	3	—	1	1	1	29	6	7	20	33
1909	19	14	2	—	2	1	4	42	7	4	13	24
Total	230	104	35	48	6	9	18	450	156	67	154	377

7756. In the first table you give your districts and in the next applications for orders. What districts are they in?—The whole of the district, so far as occupations and the population go, is of a very varied character. There is one county borough, Hanley; three municipal boroughs, Longton, Stoke-upon-Trent, and Burslem; six urban districts, and parts of four rural districts.

7757. Those are all specified?—Yes. And owing to the special wording of the Act, there is a jurisdiction of one mile outside the special district, which brings in part of the borough of Newcastle-under-Lyme, and a large quantity of residential and agricultural district.

7758. Does it include the whole of the district you are speaking about?—Yes.

7759. What is the total population, roughly?—Between 300,000 and 350,000.

7760. I see you have given a table of the applications for orders, and I find that the total number of applications is 827 in 13 years?—Yes. That would be

understood in this way: that prior to 1901 there was in existence the county borough of Hanley, and therefore there were similar applications made before the county borough justices' court in 1901.

7761. Does this table include those?—No, this table includes only the applications made in the stipendiary court. In 1901 the boroughs of Burslem and Stoke-upon-Trent had a commission of the peace granted to them, so that in and after that year, 1901, there were applications also made in Burslem and Stoke-upon-Trent borough courts. I omitted to say that prior to 1901 in addition to Hanley there was also the Longton Borough Court, and that application was made in that court as well as in the Hanley Court.

7762. Do these statistics deal with all those courts?—Only the stipendiary court.

7763. Was the stipendiary's jurisdiction less formerly than it is now?—No; there is concurrent jurisdiction in Hanley. There was up to 1901 concurrent jurisdiction in Longton, and since 1901 there has been concurrent jurisdiction in Hanley, Longton, Burslem, and Stoke.

7764. Other orders may have been applied for and made before other persons than yourself?—Yes, in the borough courts.

7765. This table shows what the stipendiary has done from 1896 to 1909?—That is so.

7766. 827 is the total number applied for?—Yes.

7767. 424 are for desertion, 243 for persistent cruelty, 58 for neglect to maintain, 48 after conviction for aggravated assault, 19 for habitual drunkards, and 35 applications to vary or discharge the order?—Yes.

7768. The applications resulted in the following orders. You have a table for that?—Yes.

7769. May I take it that is again confined to the stipendiaries?—Yes.

7770. This is interesting from some points of view. The total number of orders made upon applications for desertion in those 14 years was 230?—Yes.

7771. The total number of orders made for persistent cruelty is 104. That is not quite half the figure of orders made for desertion?—Yes.

7772. The total number of orders made for neglect to maintain is 35; the total number after conviction for aggravated assault, 48; 6 for habitual drunkard, and 9 are classed as varied, and then 18 were discharged on the ground of adultery?—Yes.

7773. The total number of orders made is 450, and you have another column showing how many were dismissed, withdrawn and no appearance, and the total of those dismissed, withdrawn and no appearance was 377?—Yes.

7774. There are 369 orders made for desertion, persistent cruelty and neglect to maintain, and 48 more for aggravated assault; that is a little over 400 orders made for those causes?—Yes, 417.

7775. Of those, 18 were discharged afterwards for adultery?—Yes.

7776. That is between 4 and 5 per cent.?—That is so.

7777. Those are your statistics?—The columns you will have noticed on the second sheet, withdrawn 67, no appearance 154, differ only in this respect; that they are specifically withdrawn in the first case, that is in the case of the 67, and practically withdrawn in the second.

7778. I must follow this?—Withdrawn 67, no appearance 154. That means the 67 and the 154 virtually represent the same thing with some slight difference. In the 67 perhaps, the parties would come before the court, and the case would be adjourned. Before the day of adjournment came round the parties would make their grievances up, with the result that on the day of the adjourned hearing the parties would not be there, and notification would be sent that the case was withdrawn, either by a solicitor or the parties attending the court. In 154 it means the parties took out their summonses and made up their differences before coming to court.

7779. Do your figures enable you to show in how many cases, after orders of separation have been made, the parties have returned together?—No, for this reason. They can, of course, as you are aware, put an end to the order by going together again, and then there would be no record as to what took place in that case. That would only come out in a subsequent case, either of assault, or a second application for a separation order, where it would appear they had been already separated on a previous occasion.

7780. I will finish about separation orders. I believe you try your utmost to bring the parties together by adjourning the case, and so on?—That is so, in several cases recently, and I think necessarily so, because in a number of these cases the parties are quite young. Even in the last few months I have had two or three cases where the parties have been married 12 months, and the wife has gone back to live with her parents, and they ask for a separation order obviously on insufficient grounds.

7781. What are the grounds generally put forward?—The ground generally put forward is either cruelty, which generally turns out not to be of a persistent or gross character—I do not want to minimise it, but not what we call persistent or gross cruelty—or, and this very often happens, the parties marry not from choice but under a certain compulsion, and the income of the husband is not very great, and they often live at the house of the parents of one or the other, and if the income coming in is rather small, those parents naturally demur to that, and to the expense or the partial expense of having to keep or partly keep both, with the result there is some quarrelling, and often the husband says: "I will not stand this," and goes away, or is told he can go by the parents whom he insufficiently pays.

7782. What is the compulsion you refer to?—If the wife is in a certain condition at the time of the marriage.

7783. Is that a common thing?—Not an infrequent thing. I do not mean to say in a large number of cases, but there have been cases where, when you come to take the ages of the children for the purpose of discussing the separation order, it is obvious that has been so.

7784. Are there any circumstances in which you think the law as to separation orders should be amended?—Yes, there are three principally I should like to draw your attention to. One is this, and this is more particularly in the case of desertion: a husband goes away, and then a wife has two choices in front of her, assuming she cannot keep herself or does not undertake the burden of keeping herself or her children: she can either come to the justices and apply for a summons, or apply to the guardians of the poor for relief. That relief can take the form of outdoor or indoor relief, that is going into the workhouse. There is a certain objection apparently, possibly rightly on economic grounds, or on the ground of testing the genuineness of the case; there is a certain reluctance on the part of the poor law officers to grant outdoor relief in these cases, or in many of them. On the other hand, there is a very strong objection in many cases on the part of the wife to go into the workhouse. Sometimes she works herself, and although she earns only an insufficient sum, nevertheless it is at all events something, and undoubtedly there is a very strong feeling that going into the workhouse carries with it a sort of stigma which attaches permanently. Therefore I have met with a number of cases where the wife, failing to get outdoor relief, has refused to go into the workhouse, and it has been with the very greatest difficulty you could exercise any persuasion, if you thought it right to persuade in such cases as that. Supposing the wife gets relief either in the form of outdoor relief or indoor relief, the guardians can and in fact they do apply for the issue of a warrant immediately: that is in the case of a husband who has gone away and whose whereabouts the wife does not know. They can have a warrant issued immediately, and the search for the missing husband under a warrant is more thorough and extensive than in the case of a summons. The result is, the man is often brought before the court with considerable rapidity. Supposing the wife cannot get outdoor relief and will not go into the workhouse and comes before the justices, what happens is this: she must apply for a summons. There is no power on the part of the

justices to do more; no matter how serious the case or how great the want, or how bad the case is, she can only have a summons. The first question is, "How "long has he gone away?" because you cannot issue a summons if a husband has been away 48 hours: therefore there is some lapse of time to begin with. Then there is the day on which the summons is made returnable: that must be a week or perhaps less. Let us assume that there is a difficulty in serving the summons because you do not trace the man so thoroughly as under a warrant, but supposing you succeed in serving the summons effectively and the case comes before the court, and the woman gets an order, one calendar month has to elapse before she can come to the court for process to enforce the order. Then she comes, with the result that something like 5 or 6 weeks—of course sometimes longer, but in many cases 5 or 6 weeks —must elapse before the wife can get any redress, and in addition to all that if she does not succeed in getting an effective order against her husband she is worse off than ever, because she has had to pay for the summons, the order, and the process to enforce the order, and that comes to something like depending on whether the summons has to be served in or out of the district, 14*s.*, 15*s.*, or 10*s.*, and that, assuming the wife's means of support have been taken away, or only slight means, is rather a grievous burden, and if ineffective the conditions are worse than ever.

7785. You have stated the difficulty, but what is the remedy?—The remedy is that in proper cases the justices should have power to issue a warrant on the application of the wife, just as they have power to do on the application of the guardians.

7786. Do you not think that might be improperly exercised?—You would have to trust to the discretion of the court, but in effect there would be no difference as far as the husband is concerned. If he goes away for some days he is liable to be arrested.

7787. The guardians make that application only after inquiry?—No. A wife goes to the poor law officer and applies for relief; if he gives outdoor relief or she goes in, we get an application by the relieving officer for a warrant immediately afterwards.

7788. Your suggestion is to make that application on the part of the wife herself, and the justices, instead of issuing a summons, should issue a warrant? —Leave discretion to issue a warrant in a suitable case.

7789. There is another instance you give in which you think there should be an improvement?—One other instance I suggest is this: that is, after a maintenance order is made in a very great number of cases the husband fails to keep up punctually, or keep up at all, the payment directed to be made by the order. In some cases there is difficulty because perhaps the man is on what is called "short time," or has not much employment, and therefore his income is not very great, but in a percentage of cases you find men who do not earn money but who could work and earn money if they chose, sufficient to make the payment. The only remedy at present is, you commit the man for so many days, 14 or 21, as the case may be. I suggest that justices should have the power in suitable cases, where clearly the man could pay and will not, to add hard labour to the imprisonment ordered, because in many cases the man does not care a straw whether he goes to prison in a certain class of cases, with a certain class of husband, especially if the arrears have increased to a considerable amount. I have had applications where the arrears have amounted to 30*l.* or 40*l.* You quite follow that the committal wipes out the whole of that, so that the wife has lost the whole of it.

7890. So that in those cases where he changes his residence you want to put hard labour on to his sentence to occupy him in His Majesty's places of detention?—Yes. The other matter is this. Under section 7 of the Act of 1895, on proof by the husband of the commission by the wife, who has a separation and maintenance order, of an act of adultery, the court is bound to discharge the order.

7791. "Shall upon proof discharge the order"?—Yes. Where the husband was originally in fault and where after the order is made he continues to misconduct himself, where he does not pay under the maintenance order, accumulates arrears, and often driving the wife to destitution and therefore to temptation, I suggest the court should have a discretion as to whether it should discharge an order where such an application is made.

7792. I thought the words were followed by "unless the husband's conduct conduces to it"?—Not in that section. In section 6 it does say he shall not get relief where wilful neglect or his own misconduct conduces.

(*Sir Lewis Dibdin.*) When it is raising a defence to the original application.

7793. (*Chairman.*) It is the last words of the section. There is no discretion, but there is a kind of discretion possible in the 6th section?—Yes, that is so.

7794. At any rate, a kind of limitation on the husband's defence?—The only other matter in connection with separation orders I venture to make any comment on is this: I am strongly in favour of the power to make those orders, and I think no useful object would be served by imposing a compulsory limitation on the power of the court, in the matter of time, say to be limited to three months. There would be two practical difficulties in many cases, or at all events in some cases. The husband would not care whether such an order was made or not, and the wife would be loth to apply for such an order, because she would know at the end of that period she would have to come back. Assuming also—this is the second point—that an order for maintenance during those three months were made, the husband knowing it would be put an end to at the end of three months, and the wife knowing she would have to come back, if the man fell into arrear with his payments, as he probably would towards the end of the period, in such a case it is extremely improbable the wife would ask the justices for a committal if he was unwilling to pay.

7795. Would it not be advisable to make some alteration of the power to make permanent separation orders in desertion cases?—Yes, there might be a suggestion that the justices should have a discretion to limit the period of the order. What I suggest is that in certain cases, for example where the order is made because the man is an habitual drunkard, or the wife, or in the case of desertion or neglect to maintain, the defendant against whom the order is made should have power to apply to the court at a subsequent date or dates to review, and if necessary to discharge the order. Supposing a man were an habitual drunkard, he could come before the court in 12 months, or whatever is a suitable period, and say, "I am not a drunkard: I am "a teetotaller: I have gone into regular employment "and produce a character as to constancy and "steadiness": then I think the court should have power to consider whether the wife should not give him a trial.

7796. If it is a mere case where maintenance is wanted, is there any need for putting in an order for separation?—Not in many cases. Maintenance orders without separation orders are not infrequently made in some districts. I should like to point out the advantage of maintenance orders without separation orders leads to a point which no doubt has been fully discussed, that is the effect of the division of a comparatively small income. I would point out with reference to the suggestion I made as to giving power to a defendant to come to the court and justify himself so as to apply for rescission, that that would have a very great influence, or tend to, on the erring party, because knowing such an application is open there would be an inducement during the period prior to the time fixed for the making of that application, first of all, to punctually make the payments under the order, and, secondly, to amend his conduct so as to come before the court on making that application with as clean a sheet as possible.

7797. You agree it would not be necessary to make a separation order?—Not in all cases.

7798. Where only maintenance is required?—That is so.

7799. That ought to be a matter in which the magistrates should exercise their discretion?—They have power to do so, and should.

7800. They did not at one time exercise it. As to the limit of time, would you not give the magistrates discretion as to that? It has been suggested that it should be done where it is doubtful whether the cruelty will be persistent?—That is what I had in view when I suggested that a discretion should be given to the magistrates to limit the order to a trial period. My objection was to forcing them in all cases to be subject to a compulsory limit.

7801. What is your view as to the effect of permanent separation orders? If the parties mean to be apart afterwards, is that conducive to immorality or not, in your view?—I should divide them into two cases: first, where the separation order is not only permanent, but followed by permanent separation. In many cases the parties come together because, for one reason, the income which is not perhaps too great as long as the husband and wife and children live under the same roof, becomes insufficient when divided into two, and the husband gets so much and the wife so much. Unless she supplements it by earnings she finds it a hard struggle to get along, and he finds life less pleasant on a largely reduced wage, with the result the economic factor tends to bring them together.

7802. There are other cases in which they never come together?—In many cases, and the effect of a permanent separation order in the present state of the law of divorce, as to the poorer classes, virtually means that irregular unions take place on one side or on both sides, which would be followed, if the parties in suitable cases were divorced, by a percentage of those cases marrying again.

7803. Do you come across those cases in your experience?—In some instances I have, not exclusively in this case, but in many cases which come before a stipendiary court it comes out that the parties are separated and living with other people.

7804. What is the proper remedy to meet that class of case, in your view?—I am not sure whether you are taking a case that ought not to justify a divorce, or a case that may be held to justify a divorce.

7805. Where you find in the end the effect of the order is that the people are permanently separated. You said in those cases it leads to irregular unions. Have you considered what is the best way to deal with those?—Assuming it only leads to an irregular union on one side, the remedy would be to permit a divorce; if it leads to an irregular union on both sides, of course one comes to the old crucial problem whether you should regard divorce as a punishment or a relief.

7806. I think that exhausts your suggestions about what I may term the minor amendments. Going back to the earlier part of your proof, have you come to any conclusion as to whether it is desirable that divorce jurisdiction should be conferred upon any local courts?—Yes, I am in favour of that.

7807. Is that on the ground of expense and difficulty in the way of the poor?—Yes, that is on the ground of expense and difficulty in the way of the poor.

7808. Do you think it is needed?—I do, because in the absence of it it is supplemented in fact by what I may call irregular unions, or other forms of misconduct.

7809. As regards the local court, will you give us your view about what is the right court, in your opinion, as compared with possible courts, for instance, the assize courts, the county courts, and the stipendiary magistrates' courts, or a judge from the High Court going from London?—If the jurisdiction is centralised in London exclusively we may take it that such a remedy as suing *in formâ pauperis* for divorce is practically useless to the very poorer classes, or even to some persons who would consider themselves to belong to what I may call the lower middle classes. Apart from the question of court fees there is the expense of going to London, bringing witnesses, and staying there, and so on, and everybody who has practised in the country and has had to come up to London knows that you cannot come up immediately before the case comes on, and you may have to wait two or three days before your turn arrives in London, so that the cost is prohibitive in many cases. It therefore amounts to a denial of justice, because if they were better off they would get divorce.

7810. Do you think the county court should have jurisdiction conferred upon it?—I think so, not necessarily because of the machinery that may be spoken of, because I agree that there should not be too loose a slackening of the marriage tie, I mean it should not seem to be treated as a mere ordinary contract that can be got rid of without the least difficulty. I think if local jurisdiction were given questions would arise as to whether the hearing should be local, or whether the hearing and the pronouncement of the decree should be local, but I think the less machinery that is used and the more publicity there is in court and before the judge the better, and the less danger, as there would be a danger of collusion.

7811. You have made some suggestion about forwarding notes of the evidence and directions to the judge of the High Court. Do you mean that in every case or in cases of difficulty?—I had that in mind rather on this point. Changes come gradually in this country, and it might be thought desirable to experiment to an extent, and I thought perhaps if there were some who were not prepared to go so far as to give complete jurisdiction to the local court, that the case might be heard in the local court and a full note of the proceedings might be taken, or at all events in cases of difficulty, and that the report together with the observations of the judge should be forwarded to the Divorce Division, and the decree be pronounced if there was nothing to take exception to, or the matter might be referred back, if it was a jury case and there was mis direction, or if the conclusions had been come to, through want of experience in the local court, improperly or incorrectly.

7812. You have a suggestion that if increased work were added to the duties of the county court judges, that might be counterbalanced?—Yes.

7813. There you refer to a matter which has been the subject of an enquiry as to how far committal orders shall be enforced?—I am assuming that there was no alteration of the law, and suggesting a large part of the work—and I speak as one who has often sat as deputy county court judge—that is judgment debtors' work, should be allotted to the registrar with the right of appeal to the judge.

7814. That has been enquired into?—It was merely an incidental allusion.

7815. I think we can pass on to another part of your proof, as to the publication of reports. You have made some suggestions about that, and the views you hold. Will you tell us what they are?—The suggestion I made was not that there should be a suppression of reports, because I think that would have a bad effect, at all events in many cases. but in order to furnish a check. I think what I have described, the names, the occupations, and the addresses of the parties and of their witnesses, should be given, and the dates and places when and where acts of impropriety are alleged to have occurred, and I suggest that all the details of a merely objectionable character, that simply constitute an advertisement in certain cases or matter for objectionable reading in others, should be rigidly eliminated.

7816. You think all that forms objectionable reading?—I mean there are many people, especially comparatively young people, on whom it is bound to produce a bad effect, because in many cases the mode of treatment of details would rather seem to suggest that they were matters of pleasantry or matters of advertisement rather than of reprobation, especially in the Sunday papers.

7817. You mention some suggestions as to the amendment of the law, and you propose putting the sexes on an equality; is that so?—Yes.

7818. What is your foundation for that?—Because of the great difficulty of laying down a proposition distinguishing particular cases. For example, supposing the suggestion were made that in the one case there might be an isolated act in extenuating circumstances; a question would arise when there were two isolated acts, if you still call them so, or three or four; where are you to draw the line? Then as to whether

if you found, in the case of the opposite sex, it was an act under extenuating circumstances, followed by no result which might affect the constitution of the family, the same excuse should prevail in that case.

7819. You support divorce in cases of lunacy, commission of specified crimes, and desertion after the lapse of a specified period. Is that merely supported on general views, or have you any specific points to bring out?—Take, for example, desertion. I have come across a number of cases where the husband has left the wife, and in some cases wife and children, and has been absent for years; he has gone abroad and cannot be traced, because they have only to change their names and they cannot be discovered, and the wife with a few children remain.

7820. Is that a common case in the potteries district?—I should not like to say it was more common there than in other districts; but it has come within my professional knowledge prior to now.

7821. Where do you find they generally disappear to; what part of the world, the United States of America?—I have heard of cases going to Australia, and not infrequently the United States or Canada.

7822. Do you think it a fair ground, if the desertion has lasted for four years and there is nothing else, to infer that there has been an adulterous intercourse during that desertion?—I have not considered that.

7823. It has been suggested by one witness that, in nine cases out of ten, it would be safe to infer where a person disappeared in such a way as you have mentioned, that he has set up another establishment. Have you considered that?—No, because I have had no actual specific instance before me. It would be a matter of inference in each case. My answer probably would be "yes," but I have no definite knowledge.

7824. Would you think it unfair to infer against a woman or a man who went off in that way that they had another establishment and were living in adultery?—I think the inference would be justifiable in the great majority of cases.

7825. That might get over the objection to merely enforcing a divorce decree on the ground of desertion simply stated?—Yes. I did not mention a suggestion I had as to the stipendiary court.

7826. Is there any other suggestion you would like to make?—I do not know whether I should have made some such suggestion as that. I have heard the suggestion that jurisdiction should be given to stipendiaries' courts coming from other quarters, but I should suggest if jurisdiction were given to courts, that the jurisdiction should be concurrent in the districts where there were both courts, county courts and stipendiary courts.

7827. You are speaking of stipendiary magistrates?—Yes. I have not the least suggestion to make in any other direction. There is a certain machinery—I am not drawing attention to it for the purpose of advocating the extension of divorce facilities to stipendiary courts, but the class of cases taken in those courts and the records of those cases where notes have to be taken in full, and are taken in full, has often brought the knowledge of the particular parties in divorce closely within the compass of the court. For example, the court has heard the cases of desertion or persistent cruelty at full length on perhaps more than one occasion between the same parties, and, therefore, it would have one advantage if those parties subsequently came before the court to apply for a divorce.

7828. That applies to coming before the same stipendiary magistrate?—Yes.

7829. It does not apply to petty sessions?—No. The other thing I should refer to is this. I am no lover of machinery in divorce cases, at all events, locally, where I think there is a real danger of collusion. I believe in publicity at all stages, and a fixation, if possible, in some cases of the evidence to be given beforehand.

7830. I do not follow how you work that out?—I frankly confess it would be very difficult to do that. If it were done by affidavits—which I do not suggest—those would be filed. In criminal cases at assizes or sessions one knows beforehand what the case for the prosecution is going to be, because you have the depositions in front of you, and if the evidence proposed to be called against a party, where a suit is presented, could be drawn up in any form and filed beforehand, there would be a very considerable check on mis-statement, and there would be considerable opportunities of investigation into the accuracy of the statements for the information of the judge or the magistrate when the case was heard.

7831. Do you mean that the petitioner in filing the petition for the suit should also file with it the proofs?—I think that might be done, subject to some other better method which has not occurred to me.

7832. Who will look into that if the suit is not defended? They would simply lie there till the thing came before the judge?—The whole of the record would come before the judge. He would be in no worse position assuming the case were not contested, but whoever locally had jurisdiction ought to resort to some of the machinery there is available. For instance, amongst the working classes in a stipendiary court there are the police, the National Society for the Prevention of Cruelty to Children, the police court missionary, the probation officer, all people who have to bring the circumstances of particular families before you again and again.

7833. Would there be any difficulty, assuming divorce jurisdiction locally were granted, if it was the practice that on the petitioner filing his petition or summons, the officer of the court should as a matter of course direct the bailiff or the local missionary to inquire into the position of the parties and report to the judge before the case was heard?—There would be no objection to that, and I think the judge should have power to make inquiries through those channels I have indicated, which would be, apart from special creation, the only local channels, with the full bringing, before the parties affected the results of those inquiries.

7834. That would give the poor the possibility of having inquiry made into every case?—Yes.

7835. (*Mr. Spender.*) Have you thought out the mechanical procedure in respect of your suggestions of the publication of reports? It is done by special reporting by the evening papers as the case goes along. Could you conveniently have rigid rules laid down?—I would allow the publication of all the data I have suggested, because in many cases you get a valuable check upon the witnesses. If their evidence is going to be given *in camera* and they are going to make allegations as to acts of impropriety at a particular place, and they know that that evidence will be heard only within the four corners of the court, and there will be no outside means of checking the truth, I think you will have much more inaccuracy of statement than you have now.

7836. I am trying to think how it will be done. You would have to have a schedule of details which were permitted?—I do not think the schedule need be a large one. I ventured to give three principal heads, the names, the addresses, and the occupations of the parties, and similar data as to the witnesses, and the dates when and the places where acts of impropriety are alleged to have taken place.

7837. You would simply have that filled in as the case went on?—Filled in as the case went on. I would not allow it to only some newspapers, and it would not be fair to allow it to some newspapers, because in many cases the sale of a paper locally largely depends upon what I may call the spiciness of these reports, and if one paper publishes such details *in extenso* the other papers either have to follow suit or they are not sold.

7838. I agree. A rigid rule is what newspapers would ask for. Would you allow the publication of the judge's summing-up?—Yes.

7839. And counsel's opening statement?—Yes, I think I would. I had thought of both, and had come to a definite conclusion as to the judge's summing-up; my answer is, unhesitatingly, "Yes"; as to counsel's statement, after some hesitation I still came to the conclusion "Yes," because I think that counsel's opening would in those circumstances be limited to the statement of fact, and not to the publication of details that might appeal to prurient minds.

7840. A case has been put to us once or twice, I think it was Mr. Priestley who said he could imagine circumstances in which it may be very important to one or other of the parties to the case, either the petitioner or the respondent or co-respondent, to have a trial in public for the vindication of his character. Would you allow the parties to apply to the judge in those cases for a trial that would be open?—Third parties whose reputation is affected ought to be able to give evidence.

7841. They might apply to the court for an open trial with regard to their evidence?—I think in many cases the introduction of third parties' names, and imputations affecting third parties, who often get up in court and wish to protest or contradict, but are told they cannot be heard, inflicts a very grave and serious injustice on those parties, and they have not the redress of taking an oath, quite apart from the issue of the particular case, or some explanation or clearing, inasmuch as the judge had totally eliminated as irrelevant the imputations on those parties.

7842. It might be a very serious thing for individuals, supposing all the allegations were, as you suggest, reduced to a dead level in a report, offence alleged here, offence alleged there, and the name of a co-respondent mentioned. The public would read the names of the persons against whom the offence was charged, and the people might disappear out of the case, and the public would have no means of judging how far those allegations were correct?—What I meant was this. The witnesses would be in the box, and would have a right to say what they liked in self-defence. I am speaking off-hand, without any calculated turn of phrase. The witnesses would depose to acts of impropriety between the respondent and the co-respondent on such and such a date at such and such a house or hotel, as the case may be, in such and such a town.

7843. You would allow the evidence to be reported in that form?—Yes. That is what I meant. That would carry no imputation on third persons, and would not increase the burden on the judge of having to listen to statements which were not strictly relevant.

7844. Have you thought of any possible way of dealing with newspapers which infringed any of these rules?—I think that the newspapers, if once that practice and that law were introduced, would loyally obey it, but in exceptional cases I would give power to the courts to deal with the publication just as though it were a contempt of court.

7845. Just as Mr. Justice Bigham proposed?—Yes.

7846. It has been suggested to us by several witnesses that the publication of evidence should be forbidden altogether, and that the judge's summing-up or the opening statement of counsel, or the judgment at the end, should be published?—I think that publicity has a strongly deterrent effect, at all events in a sufficient number of cases to make it worth while to pay the price of publicity.

7847. You do not think that would be met by allowing the judge the discretion to make what observations he chose in the summing-up? I only want to get your opinion?—No, I have thought of the matter, and for what it is worth I came to the conclusion that the full judgment of the judge should be allowed to be reported. Of course, if one of the judges were to say, "What I am about to say I wish not to be reported," I think the papers would loyally comply with that direction. That would enable the judge, if he wished to make comments, to eliminate from publication all the matters he thought ought not to be published.

7848. You would still add to that this statement of the evidence?—Yes, first of all, because of the advantage of publicity, and also it would constitute a check upon witnesses who I feel sure in some cases would be inaccurate in statement if the check of publicity were withdrawn.

7849. On a general matter, apart from the legal aspect of the question, are there in your experience many men who would desire to have separation orders rescinded if they had the opportunity?—I think so in some cases, largely because of the effect they feel in having their wage reduced. A man is earning perhaps 22*s.* 6*d.* a week, and the wife has got one child, perhaps two. Supposing an order is made of 8*s.* a week, or anything above that, unless he is living with his parents he finds life less pleasant than he expected in living on the balance in lodgings, having his own food and clothing to pay for.

7850. It has been suggested to us in regard to those cases the woman would bring the man back if she could, but very seldom does the man desire to return unless the woman desires it?—That class of case arises in this way. I have known cases where a wife has given way to drink and there has been as the result of that, or at all events concurrent with it, either unfaithfulness or a grave suspicion of unfaithfulness, and then the husband has wanted to get away from her, and has in fact left her. The wife takes out a summons for desertion, intending in some cases that summons to be a means of bringing him back, issuing it in the hope it will; and when she comes into court she gives her evidence and minimises or does not disclose her faults, and he, knowing the circumstances, is anxious to get free, and he allows her to give what evidence she chooses, and acquiesces in an order.

7851. And then afterwards repents of it?—Not necessarily. Assuming such a case as that, he always fall back upon—and perhaps such a man is justified in falling back upon section 7 of the Act of 1895, and thereby he gets a separation without any maintenance order, the order having been discharged.

7852. Has a man absolutely no remedy under the existing law of a separation order if he wishes to rescind it? Has he no means of doing so?—No means at all, assuming he has turned over what we may call a new leaf. The only discretion the court would have would be that he can apply to vary the amount of the order. If it is a maintenance order for so many shillings a week, he can apply to have the amount varied.

7853. On the ground that he is willing to live with her?—To provide a proper home, and she has no longer the things to fear which made her leave him.

7854. Upon that you could reduce it?—You could exercise an indirect pressure by reducing the amount if you thought it a proper case.

7855. (*Sir George White.*) Following out the question put by Mr. Spender, is it a common case, where a husband comes to the court and satisfies the court he has entirely reformed and that the wife still desires to keep apart from him?—I did not catch the whole of your question.

7856. Is it common to find a husband coming to a court and establishing the fact that he has entirely reformed, and asking for the order to be rescinded, where the wife is not willing to go back?—No, he has no power to come before a court unless he is prepared to show either that the circumstance of the wife have altered for the better or his pecuniary circumstances have altered for the worse. He has no power to come before the court for any variation or discharge of the order at present.

7857. Would it not be the case in the great majority of cases where the husband had reformed, that the wife would be only too glad to resume cohabitation?—In many cases she would, but the remedy is in her own hands, because if he has reformed and wants to take her back, and she is willing to go, there is nothing to prevent her.

7858. That is the reason why I put the question, whether the cases were not very rare in which the husband came to the court to help him?—And the wife was unwilling to return?

7859. Yes?—There have been some cases—I have had them—where the wife has gone back to live with her parents; she has not found married life so happy as she thought. I am not referring to cruelty. Perhaps she hoped for more than she has received. Those are the cases in which the wife is often young, and she prefers to go back home.

7860. Do you advocate giving the court increased powers to rescind the order, and practically compel the wife to come back?—Supposing there were no grave or serious fault, and especially no continued grave or serious fault, and the husband can come before the

court with a good record after an interval, the court should have a discretion to put an end to the order; not to compel the wife to go back, but say, "We rescind "the order, and until you return to your husband you "must look after yourself and earn enough for your "subsistence."

7861. I understood you have only been one year in your present position?—Yes, that is all.

7862. It has some influence on the number of orders obtained. I did not gather what the basis of population was for which these orders were taken. Your present jurisdiction extends over 300,000 to 350,000?—Yes.

7863. Has that been practically the population for that number of years that you give, 13 years?—No, because the population of the district, especially the boroughs, the six towns, has largely increased. I think you had the figures before you in the House of Commons in connection with the Federation Bill which was promoted for the union of the six towns, and you will remember there was a progressive growth of the population.

7864. Apart from that it is the same area?—Yes.

7865. Are you now stipendiary magistrate over the united townships?—They will be united at the end of this month, but that does not affect my court, or, in fact, any of the magistrates' courts. They will continue to sit in the same towns as before. My area is larger outside the federated area than inside.

7866. The number of orders is based on a population of 300,000 progressing to 350,000?—Yes, plus the fact that there has been, for many years, power in Hanley and Longton to make these orders, and in Burslem and Stoke, after 1901, there was also power.

7867. Your view is that a large number of people who came before you for separation orders, if they are suitable cases for divorce are practically denied the the right of getting divorce in consequence of expense?—Undoubtedly; with the result, as one knows, one does not infer, from the variety of cases in connection with other matters, that irregular unions are the result of more or less long-standing.

7868. You can form no adequate idea as to what number of the 450 orders granted would be cases properly the subject of divorce under your extended views of what divorce might be extended to?—No, that would be difficult, because to get out the results was a task of some little magnitude; I could not give further details to show whether that would be so or not.

7869. On the whole, you favour increased facilities?—Certainly.

7870. Not only by extending the causes, but by bringing it within the reach of the majority of the people who go for separation orders?—In specific cases, but not with the intention or effect in the least degree of minimising the importance of the marriage contract.

7871. Do you think these increased facilities would lessen, in the view of the poorer population, the value or importance of the marriage contract?—You would have to take two classes. Suppose the grounds were not extended and remained the same, I think not, because the only difference between those classes which are more well-to-do and the poorer classes is that the lack of means prevents the latter class from getting that which is open to those who have sufficient wealth to get it. There is this great safeguard in the case of the poorer classes, which would have a tendency to prevent it by any cheapening, or by making common the remedy, and that is this: there is very little employment for married women with children among the working classes. There is some suitable employment, but not a great deal. The result is you would have to have power given to the court to make the husband, if the respondent, contribute a weekly sum after the divorce, to be altered, if necessary, in the case of the re-marriage of the wife, but except in a case of a re-marriage, owing to the little suitable employment there is for married women, especially married women with young children, the sum that would be awarded even in that case would be comparatively so small that a wife will put up with a very great deal rather than try to struggle on with that insufficient sum.

7872. She would take a maintenance order, instead of going for a divorce, even if she could get one?—I think so, in some cases.

7873. I notice you give in your tables 114 cases of cruelty and 19 for habitual drunkenness. Those 19 would be for habitual drunkenness specifically?—Yes.

7874. You do not mean by that to imply in the 114 cases there were not a great number that were brought about by more or less habitual drunkenness, that is to say, the cruelty consisted of the habitual drunkenness?—No, that is where the order is made on that specific ground, that being the ground alleged in the summons. May I say, with reference to the other point, in speaking of the working classes and of women who have scanty opportunities of divorce, it should be borne in mind that divorce from a bad husband means in many cases divorce from the only means of support, and that would be a great check.

7875. We may take it that out of that 114 granted for cruelty, in a large number the cruelty was practically while under the influence of drink?—Drink is almost invariably a factor. I have no bigoted views at all, but practically drink figures in the vast majority of cases that come into a court, drink on one side or the other, or both.

7876. One of the difficulties you named in a woman applying for an order was having to pay for a summons. Do you never grant summonses free?—They are granted free in some cases. Frequently applications are made: every week applications are made, as a matter of fact, for free summonses and for free processes following that. Of course you have to be careful in granting free summonses, because in some cases you would have applications made where there are sufficient means to pay for the summonses, and you would immediately have one class getting processes for nothing and another class little better off having to pay for them.

7877. Sometimes on frivolous grounds as well?—Yes, quite. I have had a great number of cases on quite frivolous grounds.

7878. You are strongly of opinion if hard labour was added sometimes to the sentences upon men who do not pay under their maintenance orders it would have the effect of stimulating them to pay?—Yes, the section should run "imprisonment with or without hard labour."

7879. Is it your conviction that economic reasons are one of the main causes of the re-cohabitation of these couples?—Yes.

7880. Apart from the fact that they are together again, it still does not make the marriage tie any better observed, or conduce to restore happiness to the house, as a rule?—No, because after they have come together you are not infrequently asked to issue another summons for the purpose of getting a second or third separation order.

7881. In regard to permanent separation orders, on grounds where the orders are apparently permanent, on account of the lengthy separation of the husband, or the determination of the parties not to come together again, do you suggest that the remedy in that case is divorce?—Not unless there are grounds for divorce other than obstinacy or unwillingness. I do not know whether that may come at a later stage in the future. I am not suggesting it as a proper thing to do, otherwise there would be the strongest possible temptation to the one side or the other to refuse, without sufficient reason, to come together again.

7882. I take it on the whole, in order that the poor may have facilities, you are in favour of the jurisdiction of the county court as being the best available?—The jurisdiction of the county court, or, if thought right, of the stipendiary court, and in case it is given to the county court alone—and I am not suggesting the other—there is the machinery I have indicated, not machinery for interlocutory proceedings, because the fewer interlocutory proceedings you have the better, and the less collusion there will be. You have the machinery of the police and other officers who attend regularly and habitually day after day in the stipendiary court, and they are able to give the court great assistance as to the truth of the matters pending before the court.

7883. You say in your proof, in the event of the county court exercising jurisdiction, that notes of the case, where deemed desirable, should be sent to the divorce judge. Who are the parties to determine whether it is desirable?—Since that was written I have seen that the objection has been taken that there will be a variety of standards as to some matters, and that was one reason why I did not give alone mere cruelty, because it would be difficult to adopt a standard. You can adopt a standard for desertion or other things, but cruelty is difficult to define. On the point to which you are referring, objection was made that there might be as many different standards as county court judges or stipendiary magistrates. I suggested that the report of the trial, together with the observations, and, above all, observations on the manner and demeanour of the witnesses—because that would be one difficulty in getting one tribunal to hear the evidence and another tribunal to pronounce the decree—and the conclusion of the judge or magistrate should go before the Judge of the High Court, so that the High Court should have, at all events for the present, the opportunity of ensuring some uniformity of standard. I had not that in mind at the moment, because the objection was made after my proof was written.

7884. Do you feel that there is a very strong objection as to the risk of want of uniformity of standard if it is in the hands of county court judges?—I do not think so, because with experience I am sure those to whom the task were given—it is not altogether a pleasant one—would qualify themselves and equip themselves by informing themselves as to the principles which should govern these cases and the application of those principles to the facts.

7885. Apart from your experience as stipendiary, no doubt the separation orders are judiciously given, are you satisfied that on the whole separation orders are given with care?—I think so, because so far as my experience goes I never make a separation order without making some effort, unless the case is quite hopeless, to bring the parties together.

7886. I am referring to your experience before a court of summary jurisdiction, where there is not a stipendiary magistrate?—Some parts of the country I am not professionally familiar with, but in those I was familiar with, one of the things that struck me was the desire of the justices to bring the parties together. I think you may take that as being universal so far as my knowledge goes.

7887. (*The Archbishop of York.*) It has been suggested it would be a good thing to issue an information to the employer, in the case of a man failing to pay under a maintenance order, with a request that he should deduct that amount from the man's wages. What would your opinion be upon that suggestion?—My first comment is that if you could add hard labour to non-payment, in many cases you would have no need to apply to the employer, because the man would pay; but in cases where that was not effective it might be done. I have always found employers quite willing, in my district, to give any information as to the means of the parties, and we do, in fact, often have to apply to employers for the information, that is, so far as the facts go As to the power to garnishee, if the man remained on the spot or in the same employment, or passed into other stable employment, that would be effective in some cases, but the cases would not be very great. In the case of a worthless fellow, or a man engaged in casual labour, first under one employer and then under another, the thing would be unworkable, you could not trace the man.

7888. You would agree that the majority of men who come before you for separation orders, or who would be likely to fail to pay the maintenance orders, would belong to the casual labour class?—Yes, and even in other cases, where a man is more or less permanently employed, the man sometimes changes his name. If a collier changes his name and works at another colliery in the same coalfield, you are often a considerable time before you find him. He may be one of 2,000 or 3,000 men.

7889. You think on the whole that the suggestion, having regard to the class of labourer mainly concerned, is not very practicable?—I think it is practicable in some cases, and would do good, but it would not be a universal panacea, if I may say so, for irregularity of payment.

7890. You would leave it open to the employer to do so at the request of the court, or to refuse?—There are several complications. Take coal mining: the man is not always employed by the colliery company. Say, a place is taken by what is called a butty collier, and he has several people working with him, he draws the money from the office for all and hands it out. In that case you would have to issue your order not merely against the colliery company, but against the man under or with whom the particular person was working.

7891. I do not see how you could say it would be useful in some cases, unless you left it to the option of the employer to say whether it was convenient to do it or not. You could not expect the court to distinguish in these exceedingly complicated cases?—Assuming an order were made and served upon the employer in all large undertakings, at all events, and that would include the great majority of cases, the order would be loyally complied with, and without any considerable difficulty. We habitually have to refer in the county court and stipendiary court to large employers for the amounts of wages, and there is sometimes trouble in calculating the wages for a considerable period. In some cases it would do good; in no case could it do harm. It might be ineffective in a number of cases, but in some cases I conceive it would do good, and perhaps it would have the justification that good was achieved in those cases.

7892. I still want a definite answer as to whether you think the order ought to be compulsory?—Certainly, if made at all.

7893. I want to ask you a question on the wider question which you have indicated lies behind this. I think you have given great thought to these matters, if I may say so. You say the reason why you would be in favour of extension of both facilities and grounds is the number of irregular unions which at present exist. In your large population in the Potteries the number of irregular unions will be comparatively small in comparison with the great bulk of irregular unions?—Yes.

7894. Of that small percentage have you any evidence beyond impression that any large number are irregular because they might have been divorced, and have not been able to do so?—No, not in cases to any great extent which I could quote on which you could base a final conclusion. I was referring, apart from the comparatively few cases which you get in which the fact has to be proved, rather to the information you get in a variety of cases, such as education cases, where you have to make inquiries as to whether the children are going to school or not.

7895. Even in those there must be always a proportion. Is there any evidence to show that they would always avail themselves of facilities for divorce even if they had them?—No evidence at all; at least that is the probability. A woman of the working classes, especially a woman with a number of children, knows at any moment the man may leave her in the lurch, and she would have a final hold over him if she were married to him.

7896. Do you not think there is a danger lest in trying to regularise a certain number of irregular unions you may unsettle the great majority of regular unions?—I am not quite sure in what way you mean, more particularly.

7897. You say regularise the irregular unions by letting them get divorce and remarry. Is there not a danger in regularising a certain number of irregular unions you may unsettle the great majority of regular unions?—I was thinking, rather, of the removal of one cause of those unions than regularising them after they were formed. Assuming parties were separated by a permanent separation order, they will not come together. One often finds the wife goes to somebody else, and the husband picks up somebody else.. That is what I meant. I was not thinking of some form in which there might be a possibility of converting irregular unions into regular unions, but some form

where there was a possibility of preventing irregular unions being formed, by giving the opportunity or choice of a regular union.

7898. Are you in favour of extending the present grounds for separation to becoming grounds for divorce?—Not in all cases, only in the specific cases I have indicated; for example, there is neglect to maintain, and being an habitual drunkard. I should not suggest that those should be in themselves ground for divorce: I only take those as examples. I hope that nothing I have said will suggest that I wanted to lower the marriage tie in the estimation of those concerned.

7899. In the case of the grounds which you have mentioned as being in favour of, lunacy, punishment for crime, and so on —— ?—Serious crime.

7900. It would interest me to know (I only ask you the question, and you need only answer it yes or no) whether in coming to those conclusions you have considered their bearing on what appears to be the rule of the Scriptures on the subject—the one accepted case. I only want to know whether you have considered the bearing of that principle, or whether you consider that it is irrelevant?—I do not consider it irrelevant, but I have not made it so large a factor as many persons with high qualifications, to whose words I should pay much deference, and who would no doubt give great consideration to it. I do not say that for the purpose of minimising it, but rather because I am afraid I took the task, such as it was, put in front of me, as a matter rather for magisterial experience and lay experience than for the higher experience that, perhaps, I should not consider myself so well qualified to speak upon.

7901. (*Mrs. Tennant.*) Are there not cases in which the offspring of the husband's adultery are brought within the family rights by Statute, but not under common law? I mean under the Workmen's Compensation Act, for instance?—Under the last Workmen's Compensation Act compensation is payable.

7902. The wife and legitimate children have to share compensation with the illegitimate?—The compensation is payable to all dependants.

7903. Illegitimate children are among the dependants?—They are amongst the possible dependants.

7904. It would have a material effect upon the wife and her family rights if there are illegitimate children?—Even without statutory enactment there are cases, in which a certain portion of what I may call affection, or a certain portion of the husband's income, is diverted in that direction, even without the application of the Statute, I mean.

7905. I only wanted to ask the question as to the statutory position?—I have not the Workmen's Compensation Act in front of me.

7906. (*Judge Tindal Atkinson.*) That is so with illegitimate children?—It is a matter of dependancy.

(*Judge Tindal Atkinson.*) It must be.

7907. (*Mrs. Tennant.*) Again, under the Bastardy Act, if there is an affiliation order against the husband, that materially affects the family rights. There is less money for the wife and children to the extent of the bastardy or affiliation order?—Yes, but a bastardy order would apply almost entirely to the poorer classes, because a man who is married and comparatively well-to-do would take care to settle a case of that sort out of court.

7908. It is only in those two cases, under the Workmen's Compensation Act and also under the Bastardy Act, that the rights of the wives among the poorer classes are affected by illegitimate children?—They would be affected in the case of the better-to-do classes in this way—if it is not improper for me to make such an allusion. Supposing a man in well-to-do circumstances is keeping a separate establishment, not flaunting it in the face of the wife, but an irregular union with someone for whom there was some affection and regard apart from mere physical connection, there would be a diversion of a certain quantum of feeling, and a diversion of a certain quantum of income, which might not only be revenue but also capital, because there might be a provision, and in some cases a hand-some provision, made for the lady, and also for her children.

7908*a*. (*Lord Guthrie.*) How many separation orders have you had in regard to one pair? I think you said three or four?—I think three is the largest number, on the spur of the moment, I recollect.

7909. (*Judge Tindal Atkinson.*) With regard to officers making inquiries, I think every county court is furnished with a competent number of bailiffs to make inquiries?—Yes.

7910. They know the district well, do they not?—The bailiffs are many of them competent. A county court bailiff might be an excellent individual, speaking in the abstract, but I should not put him on a level with a superior officer of the police, or an officer of the Society for the Prevention of Cruelty to Children, or police-court missionaries or probation officers.

7911. Many of them are retired policemen and retired non-commissioned officers; do you know that?—No. I can conceive it possible that these persons would be glad to supplement their incomes by applying to be certified as bailiff of the court.

7912. You have had a very large practice in the county court, as well as sitting as a deputy?—Yes.

7913. And you are thoroughly familiar with the county court. Do you see any objection to county courts being trusted with the jurisdiction in divorce, if it is necessary, for poor people?—Do you mean total jurisdiction, including the pronouncement of the decree?

7914. Yes?—No, and certainly not ultimately. One knows in this country that reform or change is gradual. It is difficult to effect what people might think a revolutionary change, and one sometimes suggests, if I may use the expression, half a remedy, because it enables you to test whether you are proceeding in the right direction, and you do away with some opposition which might be against the complete proposal.

7915. The jurisdiction must have a beginning, but in process of time, is it your opinion that all the judges could easily master the proceedings in divorce just as they have in other cases in the county court?—I think so, but I would not advocate jurisdiction for every county court judge or stipendiary judge, not because of the want of any existence of court machinery, or other interlocutory proceedings, because I think the less that was resorted to the better. I am sure there is a danger that there would be not a little amount of collusion in these cases, in some instances, at all events, and it is more difficult to detect misconduct in persons of the casual labour class than in those who are more well-to-do.

7916. Whom would you entrust the interlocutory proceedings to?—First of all, I would reduce them to a minimum, because I would stamp every proceeding as far as possible with publicity. That would act as a deterrent and would prevent collusion.

7917. You have had a good deal of experience in your county of the character of the people you have to deal with?—Yes.

7018. Do not you know many instances in which the father is utterly unfit to have the custody of his children?—Yes.

7919. And that there may be cases in which a woman has no remedy under a separation order, and could only get the custody of the children by taking proceedings in divorce?—But the magistrate has power to make an order.

7920. Where he can get a separation order?—Yes.

7921. But where he cannot make a separation order, then there is no power in a local court over the custody of the children?—Is that on the assumption that the parties are living together?

7922. I am putting this case which may happen; a man may be living with his wife and yet habitually commit adultery. He may be guilty also of such conduct as would entitle the wife to a divorce, but he is not cruel to his wife, he does not do any act which brings him within the 1895 Act, and yet, at the same time, he may be utterly unfit to have the custody of his children. In that case the only way the custody

can be got from him would be by commencing proceedings in divorce and asking the judge to make an order to take the custody of the children away from him?—You mean in cases where there is ground for a divorce.

7923. But not a case which is within the Act which would enable the magistrate to grant an order?—The only thing I should like to know, in order to be able to answer you, is whether you are assuming that the divorce suit is proceeded with, and that ultimately a decree is made, or that it is not proceeded with, after getting a special order for the custody of the children.

7924. Supposing the county court has jurisdiction in divorce, and a case occurred in which the magistrates cannot grant a separation order because it is not within the Act, and the man is utterly unfit to have the custody of the children, there is then a judge who is accessible at once, when proceedings in divorce are commenced, to make an order as to the custody of the children. Do you not think that it is a desirable thing to have that?—I can put it in this way, I have known cases in which the father was unfit to have the custody of the children. I am speaking of practical cases. I have also known a case where it was reversed, as it were. If the parties are living together I do not see the slightest use in making a special order for the custody of the children unless it is given to a third person, and if you give the custody of the children to a third person, as long as the parties are living together you are striking at the innocent one as well as at the guilty one.

7925. Perhaps I do not make myself understood?——

(*Chairman.*) Are not you really arguing the matter?

(*Witness.*) I am sorry if I did not understand you.

7926. (*Judge Tindal Atkinson.*) I think perhaps I have sufficiently made my point. If county courts are to have divorce jurisdiction conferred on them, you think it desirable that the number of jurors should be the same as in the High Court?—Yes, I made that recommendation, but I should most strongly object to a county court jury consisting of people living in the locality, who are accessible not only in these cases but in other cases as well, for local cases. Increasing the number to 12 would have some effect, but I would have as little of the jury as possible in divorce cases if they were tried locally.

7927. You say you think that the wife should be entitled to a divorce for one act of adultery on the part of the husband?—I did not say that, I rather put it in this way. I can conceive, and I use a phrase a witness, I forget which witness, employed, a single act in extenuating circumstances; I would give the benefit of that to both parties, and not merely to one, but then I am not prepared to draw a line and say one act is insufficient but two are sufficient, or that two acts are insufficient and three acts are sufficient.

7928. You would say that it should be in the discretion of the court to say whether the husband's adultery was sufficient to entitle the wife to a divorce?—Then I think I should define the grounds upon which the judge should be entitled to hold that it was insufficient.

7929. (*Mr. Brierley.*) I understand whatever extension there may be in divorce jurisdiction, you are in favour of the continuance of the existing powers of the magistrates with regard to separation orders?—Yes, because they have the machinery and the records, and in some cases an actual recollection, where the parties come before the court again, of the preceding cases.

7930. And also they have the benefit of cheapness?—Yes, of cheapness and of quickness.

7931. That being so, with regard to the suggestion to give divorce to stipendiary magistrates or to other magistrates, would you not think it desirable that the jurisdiction in divorce should be distinct, that is to say, in the power of some other court than that which has the power to grant separation orders?—If you gave jurisdiction to any court having the power of making an order, you should take away the power of making the order.

7932. You are in favour of jurisdiction to make separation orders being retained. Do you not think it desirable that the jurisdiction to grant a divorce should reside in some other court than that which grants separation orders?—Not necessarily, because, supposing the court had no power to make a separation order, and thought in the special circumstances that a separation order might be a sufficient remedy, then, *ex hypothesi*, it would have no power to make a separation order.

7932. Do you not think that there might be the danger of married persons, especially young persons, asking for a divorce, when really all that was required in their case was a temporary separation?—Yes, but in that case I assume you would not grant the divorce.

7934. Assuming adultery to be proved, there would be hardly any discretion to refuse it?—It would be subject to any discretion given to the court in such instances as his Honour has referred to, or such as I have alluded to.

7935. Assuming that there is adultery, without any other circumstances in the case, there would be no discretion to refuse it?—I would assimilate the practice to that of the High Court.

7936. I meant, considering the ease with which an application can be made to a court of summary jurisdiction, would there not be a tendency for divorce to be asked for where there is no necessity for it?—The ease I am suggesting is only ease as to means, I am putting merely the removal of what is practically an insuperable obstacle in the way.

7937. There is also ease as to the speed. The thing might be disposed of in seven days?—I do not suggest that, because I am merely referring to cost. I think that the hearing should be most full and patient, and that is why I suggested a full report should be taken.

7938. Assuming a very simple case of adultery, the hearing could not be spun over any great length of time, and the parties might find themselves divorced within a week of the application for the summons?—That is a case in which they would equally find themselves divorced in the High Court.

7939. In proceedings in the High Court there is considerable delay, and there are also preliminary proceedings which give the parties time to reflect?—I have suggested in the lower court that the court should use the specific channels of information, which I have mentioned, for the purpose of investigating the statements of the parties, so that you would not immediately proceed at the expiration of that period.

7940. I am assuming a case where there is nothing to investigate, where there is adultery on one side, and no doubt that the husband has a right to a divorce if he wishes. Do you not think that in many of those cases divorces may be granted where really a temporary separation would be quite sufficient?—Well, I do not know.

7941. I mean, considering the number of cases in which the parties come together again?—I cannot agree to that, for this reason, that where a separation order alone is made, the parties often come together simply because they are driven to come together. They cannot marry. Say, for instance, that the wife (I do not want to repeat myself unnecessarily, I have said this before) finds she cannot get along maintaining herself and her children, with, perhaps, scanty employment or no employment at all, she comes back to the husband and unites the income, or she goes to a man who takes the place of a husband, and an irregular union is caused.

7942. Is not there another reason for that?—There is nothing to prevent the parties remarrying—I am not treating it lightly, but I cannot accept that.

7943. I rather suggested it might be desirable that the power to grant a divorce should be in some court other than that which grants the weekly separations?—I would preserve the same interval that exists between the decree nisi and the decree absolute as in the High Court, so that there would be six months' interval during which the parties might reconcile themselves, and the court would be able to exercise its friendly capacity in order to bring the parties together.

7944. (*Chairman.*) Your evidence has been chiefly

directed to the classes that come before you as a police magistrate?—Yes.

7945. I suppose that there are varying grades, and that there is a grade just above the class you have been speaking of, who may not be able to find enough money to come up to London to have their cases tried?—Yes, I was dealing with the poorer classes. That is why I suggested, for the intermediate class, if there was a willingness to decentralise justice, that the assizes would be a halfway house. The assize towns are much nearer, and the cost there would be much less in getting to and fro, and also there would not be the delay and waiting which you have if you come to London in some class of cases.

(*Chairman.*) I am sure that we have been very much interested in your evidence, and thank you for it.

Mr. Frederick Burrington Dingle called and examined.

7946. (*Chairman.*) Are you clerk to the justices for the City of Sheffield?—Yes.

7947. You have no stipendiary there?—Yes.

7948. I was under the impression from your proof that there was not a stipendiary?—I think most of the cases are before the lay magistrates. I should not think that he had more than 2 per cent. of them.

7949. Your name has been suggested to us as representing Sheffield?—Yes.

7950. You were formerly clerk to the justices for the city of Worcester?—Yes.

7951. The population of Sheffield at the last census was 409,070, now it is going on for 500,000?—It is estimated now at 470,000 odd.

7952. The first point that you consider in your proof is the question of local courts. Will you tell us what you have have to say with regard to that. I would rather you take it in your own way?—I think that there must be a local court of some kind. It seems to me that it must be either the county court, or perhaps you might have a special committee, a divorce committee of the local magistrates. You have at the present time a special committee for licensing work, that is the Licensing Committee, and there is also a special list of magistrates each of whom act as the judicial authority under the Lunacy Act. I think something in that way might do very well.

7953. Is that conclusion drawn from the fact that at present the parties you meet requiring relief cannot afford to get it?—Yes, there is no doubt about it.

7954. Have you met with cases in which, if they could have obtained relief locally at much less cost, they would have done so?—Yes, I have seen cases.

7955. You suggest that the husband's liability to pay for his wife's defence should be retained, but only where it is clear that he has means?—It seems to me at present, that orders are obtained against a husband when he cannot afford to find the money.

7956. You think that he ought not to be ordered to do so?—No.

7957. He is not sent to prison practically where he cannot find the money?—No.

7958. Then it comes to much the same thing. You do not think that the magistrates would form a suitable local tribunal?—No, not the whole of them, but there are different kinds of magistrates.

7959. You would not agree to see divorces sandwiched in between the rapid work of the courts?—I think I put it down that I would not like to have divorce and remarriages sandwiched in the same way as separations and reconciliations.

7960. You think they are more serious matters?—Yes. If you had a special committee they might, like the Licensing Committee, sit on special days, and hear nothing else but divorce cases.

7961. Your view is that there should be local powers for divorce; but that they should be exercised in a proper way by a proper court?—Yes.

7962. The particulars of the Sheffield court we will have printed in your evidence, without going through the detail?—Yes.

Particulars of Sheffield Court.

(*a*) The number of applications made under the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902, were:—

In 1907	289
1908	312
1909	255

(*b*) The number of orders made thereon were:—

——	For Maintenance only.	For Maintenance and Separation.
1907	—	144
1908	1	174
1909	96	67

Note.—During 1907 and 1908 the then magistrate's clerk was away ill. I have only been clerk since the end of 1908. Since I have been the clerk it has been the practice to grant separation orders only where the safety of the wife required such protection.

(*c*) The proportion of orders made on the different grounds was:—

——	1907.	1908.	1909.
1. Desertion	83	108	94
2. Persistent cruelty	39	35	45
3. Wilful neglect to maintain	7	10	8
4. Habitual drunkenness	3	3	3
5. Aggravated assault	—	—	2
6. Cruelty and neglect	12	19	11
	144	175	163

(*d*) The proportion of cases in which the parties resumed cohabitation were:—

——	1907.	1908.	1909.
Before the hearing	111	94	63

After orders made I should estimate at about 40 per cent.

(*e*) It is not the practice here for the maintenance allowance to be paid through the court or through the police.

When I was appointed justices' clerk at Worcester in 1901 I found it was the practice to make the money payable to the wife's solicitor. This I found worked unsatisfactorily owing to complaints of excessive charges and deductions. Therefore in suitable cases I made the money payable to the clerk for the time being of the justices, and made no charge for the work involved. The book-keeping involved necessitated time and labour, but there were no disputes as to the amount of the arrears.

(*f*) The number of applications for orders of discharge on the ground of the wife's adultery was:—

——	Applications.	Orders made.
In 1907	2	1
1908	4	2
1909	3	2
	9	5

(*Witness.*) With regard to (*d*), the proportion of cases in which the parties resume cohabitation, I have set them out "Before the hearing" and "After orders made." I say that I should estimate it about 40 per cent., but I should like to alter that to 70 per cent.—at least 70 per cent.

7963. (*Chairman.*) What happens to the remaining 30 per cent.?—Those I think you might take as permanent separations.

7964. Would you think that those were cases in which there should be divorces?—In some cases. There is adultery alleged and adultery proved in them.

7965. Do magistrates go into that?—Yes.

7966. Why?—Because adultery is a ground of desertion.

7967. It assists in the proof of desertion?—Yes.

7968. You find that is proved?—Yes.

7969. And those are the cases in which divorces might be granted?—Yes. There are not a very large number of cases where adultery is proved, but there are certain ones where adultery is proved.

7970. If the parties had the means those cases could be converted into divorce cases?—Yes.

7971. You do not allow the maintenance allowance to be paid through the court or through the police?—No. The policeman would say it was not his duty, but if somebody told him to do it he would do it, somebody in authority. A policeman does what he is told.

7972. Do you think that would be an advantage?—Yes. There would be no dispute about the money which was due, and you would have a proper record kept of it.

7973. Would you recommend that magistrates might have power to order that?—Yes, I think it would be a good thing. The magistrates' clerks throughout the kingdom are not in favour of it, because of the work it entails.

7974. You said that since you have been clerk, separation orders are only made where the wife requires protection?—Yes.

7975. They have not gone on making them when there is anything but the necessity of maintenance?—That is so.

7976. At Worcester you found that it was the practice to make the money payable to the wife's solicitor. Is that so?—Yes.

7977. This was objectionable, because of the charges made by the solicitor. I daresay that is so?—Yes.

7978. Therefore, in suitable cases you made the money payable to the clerk, for the time being, of the justices?—Yes.

7979. Is there power to do that?—Yes. The words of the Act are "to the wife personally, or for her use, "to any officer of the Court or third person on her "behalf."

7980. I was not aware that that power existed Then it is only a question of exercising it?—Yes, there is plenty of power.

7981. You say that book-keeping would be involved, but that there were no disputes as to the amount of arrears?—Yes. At present the wife often comes into the box with a scrap of paper to prove the amount that is due.

7982. Then you give the number of applications for orders of discharge, on the ground of the wife's adultery, aad in three years there were nine applications and five orders made?—Yes, but I do not mean to say that that covers all the cases where adultery has taken place. Supposing the husband and wife have both committed adultery, they may mutually drop the order; where the husband has not committed adultery, and wants to show up the wife, he takes out a summons and has the order formally set aside.

7983. Do you think that shows that where people are separated, they are apt to go wrong?—I think that that shows there is not so much adultery as is credited to them when they are permanently separated.

7984. In some instances it occurs?—Yes.

7985. I will now pass on from your statistics?—I think I could give you a few more if you would like to have them.

7986. I should if they bear upon anything that will help us?—Would you like to know the length of time the parties have been married, in the cases of these maintenance orders?

7987. Certainly, I think that will be useful?—I have looked up my notes for 1909, and I have the length of time they were married in 112 of the cases for that. I find that 44 couples had been married for a period not exceeding five years, that 22 couples had been married over five years and not exceeding 10, and that 30 couples had been married over 10 years and not exceeding 20, and that 16 couples had been married for 20 years and upwards.

7988. Do you draw any inference from that?—It shows that there is a considerable number married under five years. It is 44 out of 112—about one-third.

7989. Those are cases of orders made?—Yes.

7990. Could you tell upon what grounds?—No; but I could by looking up, if you wish me to do so.

7991. Would they be divided between cruelty and desertion?—Most likely those would be desertion, but I would not like to say.

7992. That is always the larger percentage?—Yes.

7993. Is there anything else you wish to say with regard to the statistics?—No.

7994. Then we will pass on to your general observations. You consider that the work of deciding on the applications for separation and maintenance orders is well done in courts of summary jurisdiction?—Yes.

7995. You find that the magistrates have a good knowledge of the people and the locality in which they live, and you think that is very useful?—Yes.

7996. That leads me to this question, as distinguishing between a High Court judge proceeding down to try cases, and a county court judge on the spot, would the local knowledge, in your opinion, be of advantage?—Yes, I think it would be of very great advantage.

7997. That is. a knowledge of the people and the locality and probably through having had the separation orders before him?—Yes.

7998. Then you point out that the applications are mostly due to, first, the casual way in which the working classes enter into marriage, and the haphazard way in which they select their spouses; secondly, drink and idleness; thirdly, the youthfulness of the parties, due sometimes to the "girl being in trouble," and so on?—Yes.

7999. Have you any remedies to suggest for that. That rather goes to seeing that marriages should be more carefully contracted?—I think we must leave that to the churches, and to religious influence being brought to bear upon the parties.

8000. Again, you notice that these orders are superseded by the parties living together again. Is that voluntary or compulsory? Do you think that is because they find they cannot get money?—I think in a large number of cases it is voluntary, but in some cases it is because the wife cannot get the money.

8001. Once she has got a maintenance order, she wants to go back, because it is not paid?—Yes.

8002. You have an observation about immorality. I should like you to deal with that in your own way?—Immorality takes place after these orders, in 5 to 10 per cent. of them.

8003. On which side?—It is mostly on the husband's side, to a larger extent by the husbands than by the wives.

8004. Do you draw the conclusion that the separation orders lead to that, or that it is independent of those orders?—Very often it is independent of these orders, but, in some cases, it is due to the order.

8005. Does that lead you to any conclusion as to permanent separation being a disadvantage?—I think that a permanent separation order is not desirable.

8006. You prefer the remedy of divorce, if proper grounds exist?—Yes.

8007. Then you suggest some amendments?—Yes.

8008. Will you explain what you have to say about those?—The first I suggested was this. I think it is rather hard that a married woman is sometimes cajoled and tricked into signing a separation agreement by which she agrees to leave her husband and accept so

much a week, and if the money is not paid she has to go to the county court and collect it. That is a very expensive process.

8009. The money under the deed?—On the deed or agreement, and it is a very long process as well. I suggest that failure to keep up the payments under the agreement should enable her to obtain a maintenance order from the court. That is more easily enforced. There is no need to prove means to pay before the magistrate.

8010. If the agreement was not kept, you would put the parties to the agreement in the position as if the agreement did not exist?—If it is not kept up it ought to be equivalent to desertion.

8011. Is that all you have to say about it?—Where the wife is keeping the children under 16—you generally find the wife has the children—if the husband has left her he always leaves the children with her, but sometimes she cannot get an order and still has to keep the children. I think that is rather hard on the wife, and I think that she ought to be able to get maintenance for the children.

8012. You think that personally she might be disentitled to the order?—Yes.

8013. But that having kept the children she ought to be able to get an order for them?—Yes.

8014. At present she can only put them into the workhouse, and let the guardians look after them?—Yes. I do not know whether it would not be a good thing to get rid of the six months' limitation before the magistrates for cruelty.

8015. Would you extend it backwards to allow it to run a longer period?—Yes. I think it would be desirable to extend it so that there should be a longer period. I think it is rather a short time. There is a way of getting rid of it at the present time; we can hold that it is desertion, that the persistent cruelty was carried out with the object of causing the wife to leave, and therefore that it was desertion.

8016. The desertion is treated as continuous, and therefore exists during the six months. The cruelty might not have been?—No.

8017. Then the next paragraph in your proof deals with the question of publication of reports of divorces and matrimonial causes. What have you to say about that?—I think that the publicity of these reports acts as a great check upon perjury, and also that it is a check upon divorces being improperly obtained. I think that publication ought to be allowed, but power should be given to the divorce judge to prohibit publication when he considers it advisable, and to punish summarily, as for contempt of court, where there are indecent details published.

8018. Would you think it sufficient if they gave the names of the parties, the nature of the cases, and the judgment pronounced, without publication of the details?—No. The friends and the acquaintances of the parties read these details in the paper, and say, "That is not right" and "That is not right," and they begin talking, and then you get to hear of it. I have acted as a local agent before now for the King's Proctor.

8019. Objection seems to have been made by many people that there are a great many people who are not concerned in the case who read the details?—I daresay they do, but I think it is a great check upon perjury and upon divorces being obtained in improper cases.

8020. Further, on the question of amendments you have some other suggestions to make. Will you kindly deal with them?—I consider that the wife ought to be able to obtain a divorce for adultery only. That is generally the one thing she will not forgive.

8021. We are told that they frequently do forgive it?—I think in a great many cases that they will not forgive it, and they are always raking it up; even if they live together it is always a thing that is being raked up, and it causes unhappiness in the home. In a great many cases they will not forgive it.

8022. What becomes of those cases? What is your experience of what they do?—Do you mean in the cases of adultery?

8023. Yes, not forgiven?—They just separate, and in a great many cases they form other connections.

8024. You suggest, also, that the two years, which at present exist for desertion as a ground of divorce, should be reduced to six months?—Yes.

8025. Why is that?—I think if a man has permanently made up his mind to live with another woman, and lives in open adultery with her, if you are not going to give the sexes equality, you ought to reduce the two years to six months. I think that it is hard on the wife to have to wait for the two years.

8026. The next point you have dealt with, more or less, is about the hearing in the county court, and you further think that there might possibly be some system of assisting the poor by means of legal aid?—Yes, but I think that you would have to make the fees rather small, so that solicitors should not be anxious to get these cases. They might try to make cases, and therefore I think you ought to have small fees, like the fees under the Poor Prisoners Defence Act. I think in a great many cases the wife will require some assistance out of the public funds; and as you have at the present time a system by which you can pay out of the public funds for the prosecution and defence in these small indictable cases, where the sentence on conviction is generally merely three months' imprisonment, I do not see why you should not have such a power in divorce cases.

8027. With what limit as to means?—I think it will have to be something like 25*l.*, perhaps less than that, perhaps 10*l.*

8028. Is your suggestion that these should be paid out of the rates?—Yes.

8029. In each district?—Yes.

(*Chairman.*) I think that is all I find in your proof.

8030. (*Mr. Brierley.*) Would you put that on the ground that it is to the public interest that the parties should be divorced in a proper case?—Yes.

8031. I suppose that is the distinction at the present time between cases in which assistance is given out of the public funds and other cases?—Yes.

8032. Did you say you had acted as a local agent for the King's Proctor?—Yes.

8033. Do you mean in one particular case?—Yes. Only in one particular case, and I find that the witnesses—well, the relatives of the parties, had read all the evidence that was reported in the local papers, and they had read it very carefully, and could tell me how much was right and how much was wrong.

8034. Could you say, from your experience in that case, if there would be any difficulty in the way of the King's Proctor in consequence of divorce jurisdiction being extended to county courts?—I do not quite follow.

8035. I understand at the present time the King's Proctor has employed you as a local agent. Would it not be equally easy for him to employ local agents to inquire into cases tried before the county court?—I think he could.

8036. You think that the extension of the jurisdiction to the county court would place no additional difficulty in the way of the King's Proctor?—No.

8037. (*Judge Tindal Atkinson.*) Did you suggest where there were agreements for separation, and a provision for the payment of so much money, that that should be dealt with by the magistrates?—Should be enforced by the magistrates.

8038. There are sometimes rather difficult questions of law arising upon the construction of those agreements, questions as to what amounts to molestation and matters of that kind?—Yes.

(*Chairman.*) I understood him to say if the money was not paid that it should be treated as desertion, but not to say that any breach of the agreement should be the ground of an order.

(*Judge Tindal Atkinson.*) I beg you pardon, I did not appreciate that.

8039. (*Lord Guthrie.*) I notice in this table that the figures in 1907 are 144 orders made, and the figure jumps up in 1908 to 175, and then down again in 1909 to 163. Was there any special cause for that?—I could not give you one.

8040. Did it depend upon the administration being stricter in one year than in another?—I could not tell you at all.

8041. Do you find according to who may happen to sit, that sometimes the cases are more strictly dealt with and sometimes more easily dealt with?—I think a lot more depends upon who is advising the court at the time.

8042. A good deal would depend upon that?—Yes.

8043. What cases would be let through and what cases would be stopped?—Yes.

8044 In what number of cases do you have professional assistance—parties represented?—There is no class of case in which we have more solicitors than in bastardy and these maintenance orders, because we always allow the solicitor's fee as well as the cost of the summons.

8045. Take a separation and suppose that it is an undefended one. In what proportion of cases do you have the petitioner professionally represented?—I should think the petitioner was represented in this class of case to the extent of about 90 per cent.

8046. Supposing it is an undefended case, in what proportion of cases is the defendant represented?—I do not think it makes much difference whether they are defended or undefended.

8047. It is 90 per cent. all over?—Yes.

8048. Do you attach importance to these cases being professionally represented?—It is much easier for the clerk.

8049. And you are more likely to arrive at a just conclusion?—Yes, and of course it is quicker.

8050. In questions of collusion you also have a certain guarantee that things will not be suppressed?—There are a great many cases of desertion where it is practically by consent, and I do not see how you can avoid it. The wife gives evidence that her husband left on such and such a date, and then the husband's solicitor says that it is only a question of amount. The husband does not want to live with her any longer and would rather pay.

8051. Do you not find that the parties, being professionally represented, does form a certain safeguard?—No doubt it does.

8052. Do counsel ever appear in separation cases?—No, practically never—very seldom.

8053. What local bar have you?—There is a local bar. I am speaking from memory; I daresay there are six or seven or eight local barristers. I have never seen them in the police-court in this class of cases.

8054. Are the proceedings in these cases in Sheffield reported in the papers?—No, not unless there is something rather spicy. I do not expect you would find them reported in the papers.

8055. You said in divorce cases that the reporting enables the King's Proctor sometimes to stop collusion, and that it would disclose it?—Yes.

8056. Was it not the case in regard to the case which you mentioned? Were the details to which you refer objectionable details, or mere statements of ordinary fact?—There was nothing objectionable.

8057. Would not they have appeared in the pleadings, and, if the pleadings had been published, would the same results not have been arrived at?—No, I think you would want a report of the evidence itself to be circulated in the district.

8058. You are assuming a full report of the evidence, and not the spicy bits which in practice appear?—It all depends from what part of the country the case comes. If you had a small divorce suit from Sheffield—that is a big place—you would not get it reported in detail in the Sheffield papers, but if it came from a small place such as I was living at before, Worcester, you would find a column or a column and a half in the local paper.

8059. Would that column and a half contain anything more than the spicy bits?—It would give practically the condensed evidence with the names of the witnesses and what they deposed to.

8060. (*Sir George White.*) It has been represented by more than one witness that many of the benches of magistrates have acted as though a maintenance order also covered separation?—Yes.

8061. Is there colour given to that by the figures you present to us, which show that during 1907 and 1908 the separation orders and maintenance orders were combined, and you say that was when the clerk was absent through being ill. Was it in consequence of his absence that the magistrates were acting in that way?—I think that it was due to the absence of proper legal advice.

8062. Before 1907 the magistrates had a clerk, and they would not have changed their methods surely?—I do not know how long he had been away ill, but he had been away for I think a couple of years—two or three years.

8063. There is only one case of maintenance in those two years. I mean maintenance apart from separation. You think it was because they were acting in ignorance of the law?—Yes.

8064. (*Chairman.*) I do not think it is more than two years ago since public attention was directed by a decision to the power of the magistrates only to grant a maintenance order and to leave out the separation part of it?—I think it was 1906.

(*Chairman.*) It would not operate immediately.

8065. (*Sir George White.*) On page 2 you say that you estimate the proportion of cases in which the parties resumed co-habitation, after orders had been made, at about 70 per cent. and not about 40 per cent. That is a matter of experience?—Yes. I have been considering the number of applications for warrants for the maintenance arrears, and I find that they are very small in proportion. That would be some test.

8066. It is a larger proportion than we have had in evidence before us. I suppose it is really a matter of experience. One would hesitate to accept it, but you say that it is a matter of experience?—That is what I should estimate it at, and I think it is a good deal nearer the mark than 40 per cent.

8067. You consider that the work of separation is admirably done by most courts of summary jurisdiction, but you go on to say that you think the proper body would be a selected body of justices appointed in the same way as the licensing committee?—That is, if they had divorce jurisdiction.

8068. That is what I tried to gather. You think it is possible to constitute a proper court by a selected body of justices?—Yes.

8069. Who is to select that body?—The whole body of magistrates select their own committee for licensing work at the present time, and the magistrates who are to act as the judicial authority under the Lunacy Act, and I think it could easily be done by the whole body selecting a certain number out of the whole number.

8070. You are presuming that the number so selected would be a superior and more capable body than the whole body. What guarantee have you for that? Are you sure that the Licensing Committee are the most eligible people for that object because they are selected by the whole body?—Yes, I think they are. I think you might take that. I am sure the magistrates who are selected to exercise the powers under the Lunacy Act are very capable.

8071. It is your opinion that a body so selected might be a proper body to do the divorce cases?—Yes.

8072. Holding a separate court at a separate time?—That is so. These applications for separation orders and maintenance orders must be heard from day to day. You could not get a special committee sitting from day to day.

8073. I tried to gather whether they were to deal with divorce or separation, and I came to the conclusion you meant it to refer to separation, but I see now you believe they would be a proper body for divorce cases. In pointing out early marriages have a great deal to do with the causes of separation, when asked for a remedy you say that should be dealt with by the churches. I presume you will agree with me the great bulk of these people do not trouble the churches very much, the people that come to you for separations?—Perhaps not.

8074. How are the churches to deal with them?—That is the duty of the churches, I think, to preach the gospel to everybody.

8075. Still we are trying to find a remedy.

8076. (*Mr. Spender.*) Pursuing a question which Lord Guthrie asked, could you give us some little

information about the practice of provincial papers in reporting divorce cases? You have lived in the Midlands and Yorkshire, and probably will be able to tell us as well as anybody. You are speaking, I suppose, of divorce cases which have been heard in the High Court and reported in the local press?—Yes.

8077. Is it the invariable practice or almost the invariable practice of the local press in Yorkshire and the Midlands to report local divorce cases?—I think the difference is between the papers. The paper at Sheffield, I should imagine, had no difficulty in filling up its news columns, but down at Worcester it seemed to me that they were at times rather short of news, and if they could spin it out they would be only too pleased to do so. That is how it struck me. I have never conducted a paper, and I do not know.

8078. Are you speaking of a daily paper at Worcester, or a weekly paper?—Both daily and weekly.

8079. I suppose the Birmingham papers go to Worcester?—Yes, but there are many Worcester papers; there are four weekly papers published locally.

8080. Would they take the trouble to report by telegraph the case of an undefended action in the High Court?—These are four weekly papers I am mentioning, and two evening papers. You would not get it reported by telegraph in the evening papers: you would get it reported the next day in full; it is sent down through the post.

8081. That would apply to practically all the local cases at present?—Yes.

8082. If you could suppose the jurisdiction transferred to the local courts do you think the reports of the cases would take up much more room in the local press?—They would report the local cases in the county court. All the cases in the county court and police court are reported at present. They do not miss any out.

8083. Practically all local divorce cases. That is the great difference between London and the provinces. In London it probably would not appear, but practically every local divorce case would be reported locally?—Yes.

8084. That is so now with cases?—They report every police case in the Worcester paper, and every county court case is reported in the local paper.

8085. Practically there is a great deal more reporting of these cases in the provincial press than there is in the London press?—Yes.

8086. You are strongly of opinion that the publication of the evidence is desirable for the sake of a check upon perjury?—Yes.

8087. At the same time you wish to put a check upon the publication by giving the judge powers of bringing the newspaper proprietor or editor up for contempt of court?—For objectionable details.

8088. Do you not think there would be some difficulty for the editor? It would put a considerable responsibility on him to decide what was an improper detail or not?—I think that he ought to be able to decide that. It depends how the case is put in the paper. Some of the papers I think rather overstep the mark, and certainly overstep the mark in the way that they report the case.

8089. Do you not think there is a good deal of evidence in cases of this kind which is really of necessity of an indecent character? If you give it you cannot avoid its nature?—Then I do not see why the judge should not prohibit the publication if it is indecent, by an announcement in court.

8090. In court as the case goes along?—Yes.

8091. It would be difficult to do that if the case was being reported in slips and sent away in to the evening papers?—Yes. If there has not been a prohibition I think the editor must take care what he puts in, and if he oversteps the mark he ought to be brought up and punished summarily.

8092. I think we should agree that if editors overstep the mark they are entitled to be punished, but editors are looking out for some definite rule to work on which will relieve them of the liability of having to pick and choose, and being liable to what one judge may say and another. There may be some difficulties?—Yes, there may be some difficulties in working it out.

8093. (*Chairman.*) You said these cases depended upon who advised the magistrate?—Yes.

8094. Does that mean the clerk?—Yes.

8095. Do you mean by that that he is the ultimate tribunal?—I think that the clerk advises the magistrates as to the law. They take the law exactly from him, but they are the persons who have to decide the facts.

8096. Do you think that the question of separation or divorce should be left to the decision of the clerk? Does it not lead rather to the suggestion that cases of that kind should be before a legal tribunal and not a tribunal of justices?—I think a couple of magistrates make a very good jury as to the facts, and they ask for advice and get it.

8097. If they act under the advice of the clerk, he may be competent, but it makes him the person to decide the destiny of these people?—Of course, but the clerk has a great deal of influence with the magistrates.

8098. Do you think that is a satisfactory state of things for this class of case?—I do not see that there is much to complain about.

8099. I should suggest that it substituted the decision of the clerk possibly for the decision of what ought to be the legal element in the tribunal?—The magistrates are bound to take their law from the clerk.

8100. Is that right in the case where the whole of the life of the people may depend upon whether the clerk is right or wrong, and where appeal is limited?—Of course if you go to another tribunal you may find that the lawyer was wrong.

8101. Do you not think it preferable that it should be that of a trained lawyer who himself is responsible for the decision?—I think it works very well in practice, a couple of magistrates and the clerk.

8102. That may be the practice in small cases. Do you think that would be right in anything which affects the whole livelihood of the people?—You mean a divorce.

8103. Or a permanent separation?—We never know when it is going to be permanent or not.

8104. That does not remove the difficulty?—I should be sorry to see the jurisdiction in these maintenance and separation orders taken away from the local magistrates.

8105. It seems to me to present very serious difficulties. One other point in regard to reporting. You said you thought if there was anything spicy it was apt to be fully reported?—Yes.

8106. Do you draw any distinction between indecency and spiciness?—When I said "spicy," I meant something that would strike the attention: I do not mean "indecent."

8107. In what character? What do you describe as "spicy"?—There was a separation order case before us yesterday that I expect will be reported. I have not looked at the paper to see whether it is or not. I will give it to you shortly. A young man was summoned for desertion. He stated he married his wife last December, that he left her on the 17th February; a child was born some time in January. The wife's sister had told him on more than one occasion that the child was not his, but somebody else's. She also stated the wife had told the guardians so. There is nothing indecent about that, but it would be very likely reported in the paper. The husband declined to live with the wife, and we had no option but to make an order for maintenance.

8108. Would it be your view that would come under the term "spicy"?—I should not prohibit the publication in that case. There is nothing indecent about it. That is what I should call "spicy" but not "indecent."

8109. Do you think that would be advantageous reading for the public?—I do not know that it would be, but it is not any worse than an ordinary case of violence.

8110. (*The Earl of Derby.*) Do you not think it depends very much more on the class of the person

whose divorce is reported than the actual details?—It would make a great deal of difference.

8111. What they call "scandal in high life," is much more spicy to the newspapers than with low life?—Yes, quite so.

8112. (*Chairman.*) The figures you have given, to which Sir George White has called attention, begin in 1907. Have you the figures distinguishing maintenance only from maintenance and separation before that?—No. I think you may take it before I came they never drew any distinction between maintenance orders and separation orders.

8113. When that distinction was drawn to their attention ——?—I drew attention to it.

8114. Apparently, when that distinction was drawn to their attention, the number of orders for maintenance became very much larger than those in which it was confined to an order for separation?—Yes.

8115. That is a very remarkable thing. We may take it that maintenance only were the desertion cases?—Yes.

8116. In which that order was sufficient?—Yes. A maintenance order is sufficient for the wife. If the husband comes to the separated wife, and she does not want him, she sends out for a policeman, and the policeman will remove the man if she will produce the order. A policeman does not understand the distinction between a maintenance order and a separation order.

(*Chairman.*) I quite see the point, and I am much obliged for those figures. Unfortunately, in the last gentleman's evidence he put in the tables for Staffordshire, but they were not separated, so that we cannot judge.

Mr. JOHN ROBERT ROBERTS called and examined.

8117. (*Chairman.*) Are you a solicitor of over 30 years standing, and have you for the last 23 years been clerk to the justices for the city and county of Newcastle-upon-Tyne?—Yes.

8118. There is no stipendiary magistrate?—No.

8119. Is it done by a rota of magistrates?—Yes. The population is about 282,000.

8120. You hold other appointments, clerk to the visiting committee of His Majesty's Prison, Newcastle-upon-Tyne, honorary secretary of the Newcastle and Northumberland Discharged Prisoners' Aid Society, and have been a member of the council of the Incorporated Justices Clerks' Society for upwards of 20 years, and are now president for the second time of the society, and you are a member of the council and past president of the Newcastle Incorporated Law Society?—That is so.

8121. You are not now engaged in private practice, but prior to your appointment as clerk to the justices you were a partner in a firm of solicitors carrying on a large general practice in the West Riding?—Yes.

8122. And you have for several years been editor of "Stone's Justices' Manual," the leading text-book on magisterial law and practice?—That is so.

8123. We may take it that your experience is large?—Pretty extensive.

8124. You have had extensive experience of the working of the Summary Jurisdiction (Married Women) Act of 1895, and have been brought in contact with the people who use that Act?—Yes. While in practice in Yorkshire we had a good deal of this work there.

8125. You have been delegated by your council, that is, the council of the Incorporated Justices' Clerks' Society, to give evidence here?—Yes.

8126. Have you taken steps to ascertain what are the general views?—Yes, I sent out a circular. The vice-president and I were appointed to give evidence, and he has seen my proof and practically agrees with what I say, and does not propose giving evidence. The council of the society also have seen it, and are in practical agreement.

8127. The first part is a criticism upon the report which we have before us, and, therefore, if you do not mind, I will take you to the facts. It is merely criticising something we can criticise for ourselves?—I thought it was necessary to deal with that, because some statements were made as regards the capability of justices dealing with these cases.

8128. I am coming to that. I want the facts which will justify criticisms upon them. I pass to paragraph 2. With regard to the question of whether permanent separation has a tendency to encourage immorality, will you state what your experience leads you to conclude?—The conclusion I come to is that it does not, in the cases that we have before us, to any material extent. I find that there is a considerable amount of immorality existing both before and during marriage, and I do not think that that is materially affected by he separation afterwards.

8129. When you speak of immorality after marriage, do you mean by both sides?—No, by the husband.

8130. Exclusively?—Almost exclusively. I have mentioned that I find in the year 1907, out of 271 men and women who were proceeded against for indency in the streets, no less than 40 were married men and 22 married women, and in 1908 the numbers respectivaly were 206; 28 married men and 24 married women. In 1909 there were 192 such cases, 28 married men and 16 married women.

8131. Although not exactly equal, it is a very large proportion of women, too?—Yes, but none of these are included in any cases in which we have granted separations.

8132. You say it is not materially affected. Do you think it is affected at all?—No; I rather think the tendency would be the other way, so far as the cases that we have had are concerned, for this reason. It is an economic question, and after you have made an order upon the husband to contribute to the support of wife and children he has very little money left, and immorality costs money, and I do not think he has as much money to spend on that as he would have when living with his wife, and has only one establishment. I think it rather has the tendency in that class to check it than otherwise, and my experience, which I have have got from applying to my court officer, who in all cases receives and pays the money granted under the separation orders, and also the police court missionary, is that there is comparatively little immorality that they are aware of on the part of men who have been separated.

8133. Do you get many cases in which these orders are terminated by the parties coming together again?—A great many.

8134. Is that produced by voluntary action, or what you have just told us, the economic operation?—Chiefly on economic grounds, and the husband often forcing himself upon the wife, for various reasons, and also by the difficulty experienced by the wife, especially when there are children, in maintaining herself during the period after the order is made, because it is a month must elapse before she can enforce the order.

8135. In many cases they are practically forced back?—Yes.

8136. What becomes of those cases in which they do not return? Are they numerous or not?—In Newcastle I think about 75 per cent., that is taking 1909, of those separated resume cohabitation.

8137. What becomes of the remaining 25 per cent.?—They would be living separate, and paying.

8138. I observe you say in the part of your proof which deals with immorality before marriage, you find a considerable number of applications showed children were born very soon after marriage?—I find last year there were eight born after marriage within an undue time, soon after marriage, and there were two cases in which children were born before marriage of which the husband was the putative father and one case in which he was not the father.

8139. You make about 84 bastardy orders in a year in your courts?—Yes.

8140. Have you any cases in which the order is discharged on account of the adultery of the wife?—Exceptionally few. We only had one last year.

8141. Have you the figures here?—No, but there have not been more than one or two a year at the outside.

8142. The next point you wish to refer to is the question of these courts possibly being satisfactory. Your opinion is that the summary jurisdiction courts are satisfactory?—Undoubtedly.

8143. And that they provide a good tribunal for what you describe as the cases of the rough, simple, and oftentimes hard drinking and gambling labourer, artisan, or mechanic, which come before the court?—Undoubtedly.

8144. You think the justices have common sense, and knowing the character of the people, they form a good tribunal to deal with these matters?—I do, and they are cases of a character they have been accustomed to deal with.

8145. To what extent does the clerk give them assistance?—I have rather an exceptional position there. I have been clerk for a great number of years, and I am listened to with very great attention by the magistrates in Newcastle, and of course I am able to keep together the continuity of practice. We do not have, as in some places, a jury of magistrates; we have only two magistrates sitting at a time.

8146. You consider yourself thoroughly competent to advise on persistent cruelty and desertion?—I do. I think I have had as much experience as any man.

8147. Would you think that the decision of such questions might present serious difficulty to county court judges?—No, certainly not, except so far as this that I think, the magistrates are far better judges of the facts, because they have a better knowledge of the locality and a better knowledge of the people.

8148. Would you think the county court judge had a better knowledge of the locality and habits of the people than a High Court judge?—I think he would.

8149. That tribunal you consider quite satisfactory for dealing with the class of points that come before you at present?—Yes.

8150. Do you consider them satisfactory to deal with divorce cases?—The view I take as regards divorce cases is this. My experience is that the class of people with whom we are accustomed to deal do not want divorce. I have pointed out and given statistics to show they come together in a great number of cases, and I think that the same thing would apply even if they got a divorce, because the great question undoubtedly with this class of people is the economic question. That is the real question.

8151. How would that operate in a class a little above them?—When you come to what you may call, first of all, the lower middle class, such as clerks, and people in a higher position than the ordinary artisan, such as foremen and men of that description, there I think there is a real hardship, because they are not the class who come before us, and from my own experience in the past and from one's general knowledge of the world, something ought to be done, I think, to assist them to get a divorce.

8152. This is quite distinct. Would you explain what the hardship is that is present to your mind?—The hardship of the cost; I do not think they can afford it.

8153. Do you mean by that, people a little above those who are habitually or often in the police court?—Above the wage-earning class.

8154. There is a section, then, to whom at present the law is not available because of the cost?—Undoubtedly.

8155. How high would you carry that? Let us see your view as to incomes which would bear on the cost at present?—I should say anyone earning from 200*l.* a year. A great many of the working classes earn a good deal of money in such places in the North of England, but it is spent very quickly and readily. I think it is a hardship for those who are receiving 200*l.* a year and up to 300*l.* and 400*l.* a year.

8156. To whom the costs of a divorce suit would be very heavy as at present?—Yes.

8157. What is the remedy you suggest for that?—The remedy there is either that the county court should have jurisdiction, or that there should be a cheapening of the procedure in the High Court, and, to save the expenses of the witnesses coming to town, that these cases should be heard, say, at the assizes.

8158. This is interesting. You think that the class that come to your magistrates really will not get much benefit out of that jurisdiction?—I am satisfied they have not the money.

8159. Supposing there were a local tribunal, do you think you would find any cases from the class you are speaking of?—I do not think so.

8160. Above that you think you would?—I do.

8161. You think there is a real grievance there?—I think there is.

8162. Does that mean you know there is any demand for something better in the way of a tribunal, something easier?—That is my experience gained when I was in practice myself, years ago, and what I hear generally now. If facilities are to be given to the wage-earning class, then I think that a court of summary jurisdiction, as I have said, is quite competent to deal with it.

8163. You draw a distinction, which is a very obvious one, between those who come frequently to the police court for separations and such-like, and those who are just above that, who want to get divorces, but cannot afford it?—Yes.

8164. I think that deals very largely with the first part of your proof. As to the numbers of orders made, what is the total number of orders you make in your court? We have the general statistics?—I should like to emphasize the point, because that is a point which has been commented upon, the fact that there are these huge numbers of separations granted causing permanent separation. That is not so. Instead of 7,000 or 8,000 mentioned in the report to which you have referred, and which has been commented on since, there possibly would not be more than 1,700.

8165. Out of how many?—Out of between 7,000 and 8,000 orders.

8166. 1,700 would be what?—Separations acted upon.

8167. Do you mean by that acted upon permanently?—Yes. I may say, that we exercise very great discretion in these cases before the summonses are issued. I make a special effort to get the parties together, and not to commence proceedings at all. Then a large proportion of the cases after the summons is taken out are settled before hearing, and the magistrates and myself are exceedingly patient, and do all we possibly can to reconcile the parties.

8168. I gather that the 7,000 are after you have issued the summons and when orders are in fact made?—I quoted the number 7,000 from the table.

8169. Those are not applications?—Those are orders made, but which are not in fact permanent separations, because the parties come together to the extent I have mentioned.

8170. About 1,700?—That would be the outside, probably.

8171. Really acted on?—Yes.

8172. What happens to those 1,700 that are really acted on? Do they remain permanently separated?—It is impossible to say how long they will keep paying as time goes on. The statistics I have given are in reference to my own court. On page 5 I say, "Speaking for Newcastle, I find that during the last "8 years payments have been made for maintenance "to the court officer in 512 cases." All the money in each case is paid through the court officer.

8173. Those are paid to the court officer?—Yes.

8174 Are there others paid direct?—No: in every case we make the money payable through the court officer. That enables one to know exactly what has been done.

8175. How many orders were made in the 8 years?—I could not tell you. My point is to show that out of 512 in which there were actual payments for some period, there are now only 84 still paying, or about 16 per cent.

8176. "Of those, 9 have been paying over 8 years, "2 over 7 years, 4 over 6 years, 3 over 5 years, 9 over "4 years, 14 over 3 years, 5 over 2 years, and in the

"remaining cases orders have been made within the "last 2 years." Cannot you tell us how many maintenance orders were made of those 512?—No.

8177. Can you tell me whether any of them were separation orders?—Practically speaking, up to the decision in Dodd *v.* Dodd in 1906 separation orders were made in all cases.

8178. Now you discriminate?—Yes, although I think there is a considerable amount of difficulty now, because it seems to me where an order is made giving the custody of the children, if you do not make an order for the separation the husband can claim the children at any time and go back to the wife.

8179. When we read the word "maintenance," that would include both?—Yes.

8180. I have nothing to ask you upon that. In the cases in which maintenance only is required an order for maintenance only is adequate?—You have a difficulty where the custody of the children is given to the wife. If there is no separation, what is to prevent the husband taking the children? In most of these cases, whether for desertion or maintenance, there has been cruelty to the children, and I take it the Act was intended to protect the children as much as the wife.

8181. It does not say so?—Is it not a fair inference, if you are permitted to give the custody of the children to the wife, it must be for the children's sake?

8182. The point was to see that we have the figures applicable to both, and that led me to ask you the question. I daresay it is the case that protection may be absolutely required in some cases, and separation wanted; in others what is wanted is an order for maintenance?—Yes.

8183. And your magistrates discriminate?—Yes.

8184. Your figures, going on from where we have got to, are perhaps of importance. Will you explain why?—During the year 1909, 177 summonses were issued for maintenance. Of this number in no less than 54, or some 30 per cent., the parties never appeared, leaving 123 actual applications heard in court, orders being made in 94 cases. Out of the 94 orders made 49 were for maintenance and 45 for maintenance separation combined.

8185. May we take that as a fair representation of the desertion cases to cruelty cases?—Yes, roughly speaking. I think I give the figures exactly afterwards. Of these 94 cases, in 24 cases only, or some 25 per cent., are payments being made, reconciliation having apparently taken place in the others. I have described what reconciliation is; it is not reconciliation in the ordinary acceptation of the word, in many cases. It is the husband, perhaps, forcing himself upon the wife.

8186. You take the average of a number of towns, and come to the conclusion that 34 per cent. of the cases are settled before hearing, and in at least 51 per cent. of those heard reconciliation takes place.

(*Sir Lewis Dibdin.*) May we have the names of those towns; I think it is important?

8187. (*Chairman.*) Yes. Liverpool, Cockermouth, Bury, Newcastle-upon-Tyne, Manchester, Matlock, Oldham, Sunderland, Bridgend, Birmingham, Kingston-on-Thames, Sheffield, Bristol, Boston and Scarborough. I have looked through the statistics and cannot find that you have there the number of cases in which the people have been reconciled. Where do you take that from?—From a return I have from the justices' clerks. I sent a circular out to the various justices' clerks, members of the society, and I have taken this from the returns I have got from them.

8188. How do they get the number of reconciliations?—"Reconciliation" may mean they assume it from the fact of the order not being enforced. That is as I take it.

8189. Are your figures based upon that?—Yes. I have consulted the court officer, who is in constant touch with both parties, and, in my cases, the orders are not being enforced; therefore, I assume that the parties are reconciled.

8190. May there not be included in that cases in which the husband has disappeared?—Very few cases.

8191. We have been hearing that frequently. You cannot get at the man; he disappears, and moves from place to place?—Not in very many cases, in my experience.

8192. However, we can judge of the statistics if we know the basis, and the basis is that you do not find the order being enforced?—Yes, and in my case in many instances not being taken up.

8193. Have you the form of return sent by those representatives?—It has not been printed. I have received these in instalments. I could turn to them.

8194. I should like very much to see them, because it would probably give the figures for each of those places. Would you mind supplying them?—It will be a difficult matter to do so at the moment.

8195. Would you tabulate them, showing the figures sent to you from those places?—Yes, I will. (App. VI., p. 46.)

8196. Those cases do not include where the husband has disappeared. Do they include where the husband has paid without pressure? "Enforcing" means warrants. I am not sure you are not drawing an illegitimate inference, that because you do not find enforcing of the orders, therefore the parties are reconciled?—As far as I am concerned I can tell that, because they are not enforced or taken up.

8197. Supposing they are paying without pressure, that is, without the court being asked?—In my case the orders in many instances have not been taken from my office. That is the point.

8198. (*Sir Lewis Dibdin.*) And the maintenance money is always paid through your office?—Yes. I am bound to know that. That is the advantage of having the money paid through the court.

8199. (*Chairman.*) Will you tell us about those other towns?—I cannot tell you. I can only give you the statement that reconciliation does take place.

8200. May I take it you have the figures of the other orders made and the orders enforced in the other towns?—I have a statement in each case showing what takes place between the taking out of the summons and the hearing and subsequently.

8201. Have you one with you, just to let us see what is said?—The first I take up is Liverpool. The proportion of cases in which the parties resumed cohabitation before hearing is 30 per cent.; after orders have been made by the court—that is, the form in which I sent out the circular—50 per cent. That is for Liverpool.

8202. You cannot tell us how you get at it?—I cannot tell you that.

8203. (*Sir Lewis Dibdin.*) The police court missionary knows a good deal?—Undoubtedly. In Liverpool I think they are in the same position as I am, because one of the questions I asked was whether it is the practice to order the maintenance to be paid through the court, and it is the practice there.

8204. (*Chairman.*) Would you mind our having the questions you sent, and the returns you got, so that we shall be able to judge?—With pleasure: I will let you have those. (App. VI., p. 46.)

8205. The next part of your proof deals with separation in the High Court?—Orders are made in some 26 per cent. That was taken from the statement made in the report to which you have referred, making the comparison between the small number of cases of applications for judicial separation and orders made in the High Court, comparing that with the very large number of applications and orders made before the magistrates. I say exactly the same reconciliation which you refer to as having taken place there takes place in the cases coming before courts of summary jurisdiction.

8206. In those cases in which there has been a petition for judicial separation, orders are made in 26 per cent. only; that leaves 74 per cent. to be settled somehow?—Yes. The same principle applies to cases coming before courts of summary jurisdiction.

8207. Do your figures show how many of the High Court cases are not carried through?—I take it from the report which has been referred to.

8208. I do not think that shows how many are reconciled after order?—No. The hearing in courts of summary jurisdiction is speedy; in the other case

a long time elapses, but the point is that the same principle applies in both cases.

8209. I quite follow. It is very interesting indeed. You are going to give us those tables?—Yes. I have have given them in my proof for the year 1909.

8210. I thought those were what you had given?—For Newcastle.

8211. Out of 512 cases?—Yes, for the last 8 years. I have already said you may take the last year, 1909, as typical.

8212. That is the one with 512 cases?—No; 512 extends over the eight years.

8213. I beg your pardon. You are speaking of 1909?—I have just been giving 1909. There were 177 summonses issued.

8214. Will you give us what you say about Newcastle?—For the year 1909, 177 summonses were issued under the Act. Of that number, 54, or some 30 per cent., of the parties never appeared. That left 123 actual applications heard in court.

8215. We have had those?—Yes.

(*Sir Lewis Dibdin.*) Lower down in Newcastle it was as high as 75 per cent.

(*The Archbishop of York.*) I want to get on record, because this evidence may be reported, the reason why you can give your statistics so carefully in Newcastle.

8216. (*Chairman.*) You stated that was because it was all paid through the court?—Yes.

8217. And not direct to the wife?—No; in every case through the court.

8218. The other towns you are going to give the details of?—I will give the details as far as I can of those.

8219. You make some point about the effect of the decision in Harriman *v.* Harriman, which perhaps you will explain shorter than it is in the proof?—Having shown that there are not really the thousands of actual permanent separations, but only possibly between 1,700 and 1,800, I think that number will be less in future as the various courts of summary jurisdiction give effect to the decisions in Dodd *v.* Dodd and Harriman *v.* Harriman, because they do not do it to the same extent in all the courts. I think probably as time goes on the principles laid down there will be carried out more fully.

8220. I also notice a point I have passed over, that you think the statistics of 7,000 odd may be not quite correct?—I am certain they are not correct in themselves.

8221. Will you tell us why?—Certainly. The statistics are prepared by the police, and the police themselves have no means of tabulating these statistics. They can only do so accurately upon such information as they may obtain from the clerks to the justices. I find that in the returns there are two columns or two returns, one showing the number of applications made altogether under the two Acts, and the orders made thereon; and in the second part of the table there is the number of applications for separation orders, and the number of orders made on those applications. There is a note attached to the instructions to the police; I have the exact words of it; in connection with separation orders in Part II. of the table referred to is this note: "Including orders containing provisions for wife's maintenance included in Part I. "above." That has certainly misled the police in many cases, and they have included in Part II., which should deal only with applications for separations and the orders made thereon, all the applications under the Act, and all the orders made thereon.

8222. (*Sir Lewis Dibdin.*) Although they are only maintenance?—Yes. I called the attention of the Home Office to this point, and they admit that is so, and that the figures are not reliable. I can give you an instance in Newcastle.

8223. (*Chairman.*) Up to a certain date, we were told, they were combined?—Up to 1906.

8224. We have the figures for those years?—Yes. 1907 was the last. I have taken the last year, 1907. That is one reason why the police are wrong, because they have based their figures upon what took place before, and they have not modified it since there has been this difference.

8225. I want to see what it leads to. The total number put down is too large for separation orders?—Yes.

8226. What would you say was the proper total sum?—I cannot tell you that; it is impossible for me to get the figures, but I can tell you exactly what it is in Newcastle.

8227. When was it that the difference between maintenance orders and separation orders first began; in 1906?—In the 1906 Return. The decision in Dodd *v.* Dodd was in 1906.

8228. The point made by you is that when you say 7,000 orders for a year, that is not 7,000 separation orders, but includes some that are maintenance orders?—Yes.

8229. Are you quite sure about that?—Yes.

8230. The figures for 1906, before the distinction was made, are 6,900?—Yes.

8231. The figures for 1907 after the distinction, are 7,100. I do not see that your conclusion necessarily is correct, because, before the distinction was made, it seems to have been about the same.

(*The Archbishop of York.*) Of course they were the same, because the confusion was even greater before.

8232. (*Chairman.*) You are quite right. They include both, although it was not necessary?—It was not necessary, and should not have been included.

8233. That is right. Can you tell us what proportion of the number of cases one may estimate were separations including, of course, maintenance?—I can only tell by calling attention to what was the fact in Newcastle.

8234. About half and half?—No. In 1907, that is the last year covered by those returns—in the Newcastle Police Return the number of separation orders granted was given as 116, whereas, as a matter of fact, there were only 116 orders on both grounds.

8235. How many of each?—Only 85 were for separation, 85 out of 116, the remaining 31 being for maintenance only. Then, again, in 1908, in Newcastle the total applications made and orders granted thereon, total applications made 159, and 128 granted, and they are identical in both Parts I. and II. of the Newcastle Police Return.

8236. What is the proportion of one to the other? In that case there were both maintenance and separation?—1908 I am dealing with now. The total number of orders granted was 130, of which 85 were for separation and 45 for mainteance.

8237. About two-thirds, roughly, were separation orders and one-third were maintenance?—Yes.

(*Mr. Brierley.*) In the next year the figures are rather the other way; 49 maintenance and 45 separation.

8238. (*Chairman.*) We can take some rough view of this?—That is my point.

8239. One-third or one-half of the total figures given might be put down as properly only for maintenance?—I think so.

8240. I do not know that there is anything more on the separation orders?——

(*The Archbishop of York.*) On page 9 you say that probably 75 per cent. may be deducted, thus leaving not more than some number of separated spouses. The figure is blank in the proof, so that we do not get your conclusions.

8241. (*Chairman.*) What is the conclusion you come to as to these figures, 7,158?—The net result is that allowing for the errors in compiling the police statistics and for the cases in which the order of the justices is never acted upon, probably 75 per cent. may be deducted from the total of 7,158 for the year 1907, thus leaving not more than some 1,790. The 7,158 is the figure mentioned in the Blue Book as being separation orders granted: so that allowing for the errors I have already brought to your notice in the preparation of the statistics, and allowing for the number of cases in which the orders are apparently not acted upon, I think you may deduct 75 per cent. from the 7,158, leaving instead 1,790 cases of separated spouses.

8242. That is arrived at by taking off those which are never acted upon although made, and not taken out of the office, plus ——?—The errors in the compilation of the statistics.

8243. Plus those which are only maintenance as distinguished from separation?—Yes.

8244. (*Sir Lewis Dibdin.*) There is a word or two more: "and this is a dwindling number"?—Yes, as the effect of Dodd *v.* Dodd and Harriman *v.* Harriman makes itself more felt.

8245. (*Chairman.*) Will you explain that last point about how Harriman *v.* Harriman and Dodd *v.* Dodd affect the dwindling. They would not take out a summons for fear ——?—No, I meant the effect upon the courts of summary jurisdiction. As they appreciate the principles of those decisions, so they will take greater care in not granting separation orders where a maintenance order would probably suffice.

8246. I daresay you heard the figures given by the last witness, where in 1907 no orders were made for maintenance only, and only one was taken in 1908, and in the next year 96 were for maintenance and only 67 for maintenance and separation combined. You mean that?—Yes, that is the effect.

8247. I do not know that there is anything more on the summary jurisdiction point you wish to refer to. If there is not I will pass on to the present jurisdiction of the county court?—The only point is there is apparently a unanimous concensus of opinion in the justices' clerks with whom I have communicated—perhaps that is what you are coming to—that these cases are very well dealt with by courts of summary jurisdiction, and that the court of summary jurisdiction is the preferable court.

8248. I thought I had asked you that before. Would you pass on to the next point. That is what you have just told us?—Yes.

8249. Are there any further statistics on that page which you think will be of use to us?—If it is suggested that these cases that courts of summary jurisdiction now deal with should be transferred to the county court, there is one more point on the question of time I should like to call attention to, and that is this. We take these cases and bastardy cases once a week, every Thursday, and I find that during last year we spent on these married women's cases 70 hours. We take all the evidence in shorthand, and we are pretty quick in addition, so that I think you may safely multiply that 70 by 4 if those cases were dealt with in the county court where a long-hand-note is slowly taken. That would make 56 days of five hours for the county court in Newcastle to simply take the Newcastle separation cases. I think that would be a burden too grievous for the county court to bear.

8250. That is taking a transfer of all this work into the county court?—I am not dealing with any question of divorce. If it is suggested, as it is suggested, that the whole of this work should be transferred to the county court, then it would mean what I have said if the Newcastle County Court took the work of my court.

8251. (*Lord Guthrie.*) On that page you say the fees are trifling. Will you give us an idea of what the fees are?—3*s.* 6*d.* for a summons, and 4*s.* for the order, but in many cases, which I think I have mentioned here, we remit the fees.

8252. (*Chairman.*) You also say that access to the justices is easy?—They sit every day.

8253. And for this particular branch of work which you are now discussing, you think they are a better tribunal than the county court?—Undoubtedly.

8254. (*Sir Lewis Dibdin.*) You give some statistics as to the replies you have received; it is not only your opinion?—No.

(*Chairman.*) I take it generally there is a unanimous opinion; that is why I did not give the details.

8255. (*Sir Lewis Dibdin.*) Out of 160 replies ——?—That should be 189 now: I have received many since the proof was prepared. Out of 189 replies received from justices' clerks throughout the country, I find that 22 only are in favour of the proposal to transfer the present jurisdiction of the justices to the county court.

8256. (*Chairman.*) And they emanate from small petty sessions?—Yes, in nearly every instance, and are of no great importance.

8257. With regard to the statistics which you have given at the foot of the page, what are they directed to?—You have had those.

8258. Might I recapitulate them, because I am not sure you divided them. Summonses issued, 177: applications heard in court, 123; orders made, 94, in 49 of which maintenance only was granted and in 45 separation and maintenance combined. The grounds upon which the orders were made were: desertion, 44; cruelty, 32; neglect, 11; habitual drunkenness, 2; aggravated assault, 5. One order was discharged on the ground of adultery. Those are the particulars for 1909?—Yes. Then I have taken some particular statistics since the 1st October last, which I think are of some interest. Since the 1st October last up till the end of the year 51 summonses were granted under the Act; in 20 of these the applications were withdrawn, or the parties did not appear, and two cases were dismissed, leaving 29 orders made.

8259. 177 were up to October?—No, the 177 would include these, but I have gone more into detail in these. The average age of the wives in the 51 cases was 33, and the husbands 36. The average duration of their married life was 11 years, ranging from 1 to 42 years: 19 were married up to 5 years, 6 between 5 and 10 years, 13 between 10 and 15 years, and 13 more than 15 years, making 51.

8260. In addition to these cases, you have applications in which the justices, under your advice, do not think there is sufficient ground for granting them?—Yes, and cases in which I have seen the parties myself.

8261. And you also take a good deal of trouble to get the parties together, and the missionaries help them?—Yes. I might call attention to this. I find in 1894 and 1895, which are the two years immediately preceding the coming into force of the 1895 Act, we made in 1894 74 orders, and in 1895, 93. I cannot tell you how they were made up, but now, with an increase of population and the additional grounds, the orders we make are not many more.

8262. You have acted upon the separation of the two kinds, separation and maintenance?—As far as possible, and, I think, have used very good discretion.

8263. The next point is one of generalisation from all the statistics?—That is so.

8264. I daresay that will be very useful. You go on to say: "Though it is difficult to form an accurate estimate, "I should say, judging from the replies I have received "from justices' clerks throughout the country, that "orders are granted on the various grounds in the following proportions: desertion, 40; persistent cruelty "45; neglect, 5; habitual drunkenness, 4; aggravated "assault, 6." Does that tally more or less with your own experience?—Yes.

8265. Then you continue: "In the great majority "of cases I find it is the practice to order the maintenance allowance to be paid direct to the wife." In your case, you pay through the office?—Yes, with excellent results.

8266. It is much better in the interest of the wife and children. Do you do that in bastardy cases?—We have no power, but I gave evidence before the Committee sitting on the Bastardy Laws, and one of my recommendations, which has been adopted, was that there should be a similar power there. I think it would be a useful thing. That is one of the recommendations of the Committee.

8267. Your experience of the Acts as worked in Newcastle is that they work smoothly and satisfactorily, and that they are absolutely necessary for the protection of the women and children, and that any change which would materially lessen the celerity and cheapness which characterise their administration would tend to deprive them of their efficiency and defeat their object, and you think that the power should remain the same?—Yes.

8268. Would you not increase the discretion of the

magistrates by allowing them to make separation orders temporarily as well as permanently?—I have not the slightest objection to that, because, in the great majority of cases, that is really what happens. There are practically few permanent separations; there are certainly not more than about 25 per cent., and I see no objection to their having that discretion; in fact, I should rather welcome it.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTEENTH DAY.

Wednesday, 16th March 1910.

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace THE LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Sir FRANCIS PIGGOTT called and examined.

8269. (*Chairman.*) You are the chief justice of Hong Kong, and you have expressed a desire to bring the attention of the Commissioners to a point connected with domicile which has been brought to your attention, and you have been good enough to prepare a memorandum on the subject which you submit for our consideration?—Yes.

8270. Would you kindly state the point you wish to bring before us, and any observation you have to make upon it, so that we may be enlightened sufficiently to understand the memorandum?—The first point I want to draw attention to is the jurisdiction over co-respondents abroad. It is that question which arose in my court and it leads inevitably to the question of domicil. The facts are very short. The petitioner was a master mariner who lived in Hong Kong: he was up and down the China coast for voyages of about a month at a time. His home was in Hong Kong.

8271. His domicile, you mean?—His matrimonial home was in Hong Kong: his domicil was Scotch. After one of his voyages he found it necessary to start proceedings in divorce. The court of Hong Kong has no matrimonial jurisdiction, but that really is irrelevant because his domicil was in Scotland, and he was obliged, under what is generally understood to be the law, to go to the court of his domicil and there present his petition for divorce. All the alleged acts of adultery, which covered four or five years, occurred in Hong Kong and Macao. There had to be evidence taken on commission, which was very long.

8272. And a suit instituted in Scotland?—Yes. The evidence was very voluminous. But the Scotch court held that they could not cite the co-respondent, who was an Englishman in Hong Kong. The result was that they found the adultery proved, and gave the husband a decree for divorce. The next step was an action for crim. con. in Hong Kong. The whole of the evidence had to be gone over again, because the defendant was not a party to the Scotch proceedings. It was a very long trial, about five days, and the jury found the adultery proved and gave the plaintiff damages, but as a matter of fact he could not recover all the expenses he had incurred.

8273. Why not?—I did not intend to introduce this point, as it is technical; but I doubt very much whether he could in law have recovered the whole of his Scotch costs. The result, in fact, was a very heavy loss, and he found himself in the bankruptcy court, so that the result of the wife's infidelity was his own bankruptcy. That is the outline of the case, and it raises three points I desire to submit for the consideration of the Commission. First, whether the court which has jurisdiction in divorce should not also have jurisdiction against the co-respondent. Under section 33 of the Divorce Act, 1857 ——

8274. In England?—In England—the right of the court to give damages against a co-respondent is governed by the same principles as the old action for crim. con. Therefore, so far as I can follow the decisions—it has not been argued very much—the right of the court to give damages against a co-respondent is governed by the same principles as an ordinary common law action, and therefore where the defendant is not resident, or unless he is domiciled or usually resident within the jurisdiction of the court, there is no jurisdiction.

8275. He is subject to the jurisdiction of the court he is sued in: nobody can get over that?—My suggestion is that the court which has jurisdiction in the question of adultery should have jurisdiction over both parties to it.

8276. The co-respondent, too?—Yes.

8277. How can you give a court whose jurisdiction is in a certain island a jurisdiction over persons who have never been in the island and owe no allegiance to it?—That raises, of course, the whole question of jurisdiction, but that is my suggestion.*

8278. That is the first point. What is the second?—The second point is—it is a small but not an unimportant one—that the abolition of the action for crim. con. by section 59 leaves these two points open:—an action in a colony for crim. con. committed in England, and an action in England for crim. con committed abroad. Those points are open; and as a matter of

* The result of the present system may be disastrous; for it by no means follows that the court which tries the divorce petition may come to the same conclusion on the question of adultery as the court which tries the action for crim. con. In the case tried before me the Scotch Court found adultery committed, I think I am right in saying, by the defendant and not by a person unknown: it was quite possible that the Hong Kong jury might have come to a different conclusion. Or, seeing that the defendant could not be made a party to the Scotch proceedings, if the Scotch Court had found that the adultery alleged was not committed, the husband would not have been precluded from bringing the action for crim. con. in Hong Kong, with or without fresh evidence, and the jury might have found that it was committed. Of course the question of jurisdiction is a troublesome one. But the co-respondent abroad may well be said to be a "necessary and proper party" to the divorce suit, and the decisions under Order XI., rule 1 (i) do, I think, warrant the extension of jurisdiction which I have suggested.

fact the case tried before me was an action for crim. con., in spite of the divorce proceedings in Scotland.

8279. Have you any remedy to suggest?—My own view is that section 59 applies only to those actions for which the alternative remedy is given; and that this should be made clear.

8280. I am not sure that I follow you?—Certain actions for crim. con. are abolished.

8281. English actions?—Yes, and the right is given to the court to award damages against the co-respondent.

8282. In an English suit?—Yes, but there is nothing said as to where the act is committed, where the criminal conversation is committed, and therefore it leaves the point very vague.

8283. As to whether it must be in this country or not?—Yes.

8284. I follow. Might I say on that point that I do not think there is any doubt that a suit for divorce instituted in this country against a respondent and co-respondent over whom the court had jurisdiction, would be decided wherever the act was committed. I do not think there is much difficulty about that?—I do not think there can be; but there is this difficulty, that the action for crim. con., which is abolished in so many words, might be brought in England for criminal conversation committed in Germany, independent of divorce ppoceedings. That is the difficulty.

8285. What is the third point?—The third point is this: The result of the doctrine of domicil is that the wife must follow her husband to the courts of his domicil.

8286. Might I pause there for a moment? We get over that in England without any difficulty, by saying if the husband deserts his wife and goes to a foreign country we treat him as still domiciled in England for the purposes of the suit?—That is so, but the doctrine is not quite so broad as it is in America. I remember the decision in which it was laid down. But the doctrine has not quite taken a complete form. The point I wish to draw attention to is this: that in any circumstances the suit, whether a suit by the wife or by the husband, must be brought in the court of the domicil, and in the Colonies there are a very large proportion of the population who cannot acquire a domicil at all. There is always the desire to return home to England after the contemplated fortune is amassed, and a very large percentage of people never acquire a domicil at all. The result is such a case as occurred in the proceedings to which I have referred. I would suggest this, that it might be possible—the question is the same as arose in the Le Mesurier case ——

8287. That was in Ceylon?—The court there had matrimonial jurisdiction, but it was held it had no jurisdiction in divorce.

8288. Because there was no domicile?—Yes. I may say these are entirely my own views; the Secretary of State has no objection to my expressing them, as such.

8289. What is the remedy? You are dealing with the case of two people who are for many years in the colony, but whose domicil remains in this country, which is very common with English people?—Very common indeed. I would suggest that the court of the matrimonial home should be allowed to take the evidence and to treat it as if it was an action for judicial separation. In Armytage's case the jurisdiction of the matrimonial home was maintained in judicial separation. I would suggest that the whole of the evidence and the whole of the case should be tried in the colonial court as if it was a case for judicial separation, and then that the petitioner should have a right to move the record up to the Divorce Court in England, and the Divorce Court should have power to pronounce a decree if it thought fit.

8290. It seems a very valuable suggestion?—It would not be by way of appeal; the petitioner would take the record bodily.

8291. It amounts to this: Try the case where the parties are, and leave the decision to be formally pronounced by the court of the domicile if satisfied that the case had been properly dealt with?—Not quite that; it would not be by way of appeal; it would be something more than evidence on commission; it would be a decision of a competent court on the facts, on which the Divorce Court would pronounce a decree for divorce, if it thought it was a case in which divorce should be granted.*

8292. Those are the points you wished to bring before us?—The principal point on which I desire to lay material before the Commission is the necessity for adopting the national law as the basis for divorce jurisdiction, instead of the law of the domicil or the law of the place of celebration. The question is highly technical, and I have prepared a memorandum on the subject, which the Chairman allows me to put in without reading. I have added a *resumé* of the history of the rise of domicil as the basis of jurisdiction, which I think may be useful. A very careful examination of the subject has led me to the conclusion that the adoption of domicil and the ignoring of the national law as the test of jurisdiction is responsible for all the hard cases which have arisen in the case of mixed marriages. In my memorandum I have as strongly as possible advocated the adoption of the national law, because I believe it is almost entirely due to our doctrine of domicil that the solecism continues that a man and woman may be married in one country and their children legitimate, and unmarried and their children bastards in another. Such a thing I submit to the Commission should be impossible when that other country is the one to which they owe allegiance.

8293. Is your suggestion that the nationality of the husband should be the test?—Yes.

8294. Because the marriage lawfully comes of his nation?—Yes. I have dealt with the question of the mixed marriages where the parties to the marriage are of two nationalities. Of course that is only a branch of a large subject; my suggestion broadly is that the national law should govern all questions relating to marriage and divorce.

8295. There are difficulties about it?—Yes.

8296. You may have people who have made their permanent home in this country, who still retain, like many Americans, their nationality?—Yes.

8297. You would send them over to America to get their decree?—The question of the exclusive jurisdiction of the court of the domicil or the national court is another matter.

8298. You mean the national court should also have jurisdiction?—Yes; I think the question of jurisdiction should be separated from the question of the law applicable.

8299. Do you mean both the courts of the domicile and the courts of the nationality shall have control?—Not the court of the domicil; the court of the matrimonial home.

8300. It is an interesting discussion. The difficulty is you get many cases, I know many, where, for instance, an American and his wife have made England a permanent home, but they have not abandoned their nationality; they have not become naturalised. Suppose a dispute arose which resulted in a divorce case, according to your suggestion they would have to go to America to get their case decided?—I have emphasised this point, that the question has never been yet satisfactorily explained why the court of the domicil has exclusive jurisdiction. It differs from the law of succession, where the court which has jurisdiction over the property has jurisdiction in the matter of the succession, administering the law of the domicil.

8301. That does not meet the difficulty I have just put, does it?—I have dealt with a great many branches of the subject.

8302. I am sure your memorandum will be most interesting, but how would you answer the point I just put to you?—I think the courts should have jurisdiction, the court of the matrimonial home, but that the national law should be administered.

* The finding of the court would of course bind both parties; so that if the colonial court found the grounds of divorce alleged in the petition not proved, the respondent would be entitled to plead that judgment in subsequent proceedings for the same cause.

8303. The national law—I beg your pardon; you did not mean the courts of the nationality independently of the question of domicile should have jurisdiction?—No.

8304. But that the courts of domicile should apply the national law?—Yes; it is substitution of the national law for the law of the domicil.

8305. I have no doubt you have discussed it fully in your memorandum. I am not sure whether we shall have to inquire into that, but I understand you were sailing for Hong Kong, and I thought you might present such views as you have to the Commission.

8306. (*Lord Guthrie.*) I want to ask you two questions. In regard to that case where the domicile of the husband was in Scotland, had the co-respondent been served with a copy of the summons?—The Scotch Court had no power to do so.

8307. In Scotland what we do is, we order an intimation to the co-respondent, not that we could force him to appear, but to give him an opportunity. Do you know whether he had an opportunity in that case?—The Scotch proceedings did not come before me. I had carefully to abstain from looking into them, but I could give the name of the case, and the actual proceedings could be seen.

8308. The other question was this. With regard to what you said as to the court of the matrimonial domicile taking evidence and preparing the case for decision by the court of home domicile, do you limit that to British possessions?—I am obliged to.

8309. The Chairman put a question as to the proceedings being carried out in the United States?—My point is this. A very great hardship arises in consequence of the doctrine of the exclusive jurisdiction of the court of the domicil, but in the case of the Colonies there does seem to me a way out of it; it would be a great relief to people living in the Colonies.

8310. Would it also have the advantage—we find a great difficulty in Scotland, and I have no doubt it is so in England—that when you send abroad to the Colonies to take evidence, in the first place, it has to be done on what we call interrogatories, a very unsatisfactory proceeding; in the second place, it is immensely costly, and prevents many divorces being gone on with; and in the third place, you have to appoint the town clerk of some colonial possession, somebody you know nothing about. All these objections would be obviated?—They would. My suggestion is that the colonial court should give the decision on the facts which very probably occurred in the Colony.

Statement of the Witness.

I. The oral evidence which I have given brings me to the important question of jurisdiction in divorce, and I desire to call the attention of the Commission to the necessity of substituting nationality as the test of jurisdiction in lieu of domicil, the national law in lieu of the law of domicil as the law governing the subject.

I quite understand that there should be expressions of astonishment that any one should be so bold as to attack a principle which is so deeply embedded in the English system, but I make the suggestion very seriously, and after a prolonged study of the question.

Very briefly stated, the conclusion I have come to is this: that the view to which innumerable judges of greatest eminence adhere, *e.g.*, Lord Selborne in Freke *v.* Carbery, that domicil has been adopted by the English law (in the instance, in succession), in deference to the laws of the civilised world, is a mistaken notion; because, so far as I can see, no continental country has anything approaching, or even resembling our idea of domicil; and moreover, that neither their courts nor their lawyers understand what we mean by it. I exclude, of course, the United States, whose laws are practically the same as ours, at least in those States where the English common law prevails.

II. Now, so far as this Commission is concerned, there are two ways of approaching the subject:—

(i) either to express an opinion on the broad question, and (should the Commissioners agree with me) to base the recommendation that the national law should be substituted for the law of domicil in all questions now decided by the law of the domicil; or,

(ii) to pass by the general question, as one too broad in its nature to be dealt with by the Commission, because it affects so many other subjects; but to make a special recommendation as to divorce to the same effect, on the ground that the questions involved in matrimonial affairs are properly to be dealt with by the national law, and that they ought to be withdrawn from the influence of the law of the domicil.

I think I may assume that should the Commissioners agree with me, they are not likely to go beyond the second suggestion. But I propose to indicate, in briefest outline, the facts on which I rely in support of the conclusion I have come to; because it is inevitable that some members may, if I may use the expression, be haunted by the traditions of the schools and courts, and may feel that they would be touching the sacred ark of the law of domicil by introducing an exception to its omnipotent sway, even though they felt that after all the national law is the proper test in matrimonial matters. If, therefore, I do no more than instil a doubt in their minds as to the soundness of the theory, it will, I think, be sufficient for my purpose; and if I can satisfy them that the national law is more appropriate than the law of the domicil for deciding matrimonial questions, they will feel themselves more free to make the necessary recommendations. Obviously I can only give the argument in outline; to do more would involve the reading of many hundred pages which I have written on the subject.* I can hardly even invite the Commissioners to read them. But I will ask them to accept the facts on which I rely as ascertained, and to believe that they are not invented for the sake of a theory, but that the conclusion has been built up on them after they were ascertained. In the course of my remarks I must refer to decided cases; but of course, I do not invite the Commission to constitute itself into a court of appeal, or even to express an opinion on those decisions; I believe that a recommendation can be made which would not necessitate any such expression of opinion.

III. First.—The idea that domicil is recognised as a general principle, and that the law of the domicil is enforced as we enforce it, generally by civilised States, is a profound mistake. As I said just now, I exclude the United States, for their law as to domicil is practically the same as ours. Yet even there it must be noted that in one important particular there is a divergence: the power of the wife in certain cases to acquire a domicil separate from that of her husband.

Scotland, too, I exclude; for there also the law of domicil has grown up side by side with its growth in English law, and for practical purposes may be taken as the same as ours. I confine myself to continental laws. And here also, I should say, that the definite information which I have is limited to the codes of France and Germany; in the case of Italy, it is only a strong belief; in the case of other countries it is a belief which is, I think, well founded. But this, I think, must be admitted, that if two such nations as France and Germany disagree with our doctrine, are shown to be in complete disaccord with it, the much-talked of consensus of opinion would be non-existent; the statement that it is a doctrine to which all civilised nations adhere would be shown to rest on inaccurate information, and must therefore fall to the ground. But I would have you remember through how wide an area the influence of the French Code is spread. It is of course in force in the many tributary countries which owe allegiance to France: it has been preserved in four of our own Colonies, and in some of the States of the American Union. Until very recently the laws of the German States which bordered on the Rhine were based on it. Its influence has been felt in the codes of many South American Republics. I hesitate to assert more; but I think it is accurate to say that this influence has also been felt in some European countries. So far as

* In Part II. of "Foreign Judgments," 3rd edition.

the new German Code is concerned, it is one of the last words of scientific law-making.

I want, before proceeding further, to draw attention to two statements made in well-known cases which have a great bearing on what I am about to say. Lord Wensleydale in Bremer *v.* Freeman, criticising the evidence of French lawyers, which had been given in a case of succession on the questions of domicil which had been put to them, said: "It is to be remarked, speak-" ing with all respect to these gentlemen, that the rule " of international law which all English lawyers con-" sider as now firmly established, namely, that the " form and solemnities of the testament must be " governed by the law of the domicile of the deceased, " does not appear to be recognised, or at least borne " in mind by any one of them"; this, I think, for a very sufficient reason which will presently appear. And in a recent case, *re* Martin, the present Lord Lindley dwelt throughout his judgment on the fact that there was a fundamental difference between the English law of domicil and the French law of *domicile*, and used these expressions to emphasise it: "domicil (in the " English sense)" and "domicil (in the French sense)." I might almost say that this is sufficient to substantiate my point. But the evidence I shall now adduce is far more cogent than mere inference.

IV. This is in brief the French law of *domicile*.

There is no reference in the codes to a *domicile* of origin. The *domicile* of a Frenchman is the place where he has his permanent establishment. It is in a town, even in a street, and not in the country generally as with us. It is required for the purpose of fixing the jurisdiction of certain courts and officials over him, while he is alive; and over his succession when he is dead. Writs may also be served there, that is, at the house which is his *domicile*. A foreigner can only acquire a *domicile* under the code by authority of the Government. A good deal has been made of this in some of the cases, in order to distinguish French from English law. It is an important factor in the case; but I think that there are more important facts to be found in the essential divergencies of spirit in the two laws. By Article 13 of the Code Civil, the consequence of acquiring a *domicile* in France is, that the foreigner enjoys all civil rights of a Frenchman. It is not a question of status or capacity, but of the acquisition of all civil rights, and consequently of submission to all civil duties, as distinguished from political rights and duties, *e.g.*, military duties. I leave out the criminal law, which in its application to foreigners is governed by principles of its own. With these exceptions he practically becomes a Frenchman. There is no question of *animus manendi*, or of absence of *animus revertendi*, as we understand these expressions. None of those rules with which we are familiar—that a man must have a domicil, that his domicil of origin is that of his father, that the domicil of origin revives, and many others, find any place in French law. It is, of course, true broadly to say that a man must have a *domicile* because his *domicile* is his establishment or permanent residence, and most men are presumed to have a permanent residence of some sort; but that is not the spirit in which we apply these rules. Further, I beg you to notice what the civil rights and duties are which accrue to the person *domicilié en France*: they are *all* the rights and duties of a Frenchmen, and not merely those affecting his personal status. Think of the right of legitimating natural children! Now I must concede that if the law of domicil were as we think it is, the same in France as in England, we should be driven to the logical conclusion that an Englishman domiciled in France would acquire this right. But it is hardly conceivable that we should assume that he has this right without further enquiry, if there is a doubt as to whether the law is the same, as we think it is. Note too that the English courts will enforce these supposititious rights; but, seeing that the law of France is not the same, the French courts would not recognise such rights. Think of the hopeless confusion which must arise in connection with the limitation of a man's powers of dealing with his property! Assuming our courts to be logical, they would hold the powers of an Englishman domiciled (in the English sense) in France so limited; but the French courts would not. But what the French courts would do, is to apply this limiting law to an Englishman who had acquired a French *domicile* in Paris, which it is more than likely the English courts would not do unless the conditions of our law of domicil has been also complied with.

Think, too, of the rights of his wife in his property, and of his heirs, and of the hundred and one things which hedge a Frenchman round! This is abundantly clear, that when the French law declares that an Englishman is *domicilié à Paris* it has not the remotest relation to what the English law means when he says that an Englishman is domiciled in France. I put my point very concisely:—Is it right that the same confusion which reigns in regard to property should affect the marital rights of husband and wife?

V. And this is the German law:

"A person settling for permanent residence at a " certain place establishes his *domicile* in this place. " The same person may have several *domiciles* at the " same time at different places. As soon as a person " abandons his residence with the intention of giving " it up, he has no longer any *domicile*." For the learned Lord who presides, and the learned lawyers who are members of the Commission, it is not necessary to go further—a man in Germany may have two *domiciles*, or none at all.

Briefly, then, in both these countries the idea of *domicile* is that it is a fixed residence for civil and commercial purposes, adopted or abandoned according to the person's will, and entirely independent of any legal control; obviously for the convenience of the community among which the person establishes himself, not least of the advantages to the community being the power to serve legal writs and other documents at this *domicile*. By French law a man is not allowed to trade upon the community while he is trading with them; he must submit to the jurisdiction of their courts.

VI. I pass to the second point, and in spite of its apparent boldness, I have no hesitation in stating it:—I doubt very much whether the Naturalization Act of 1870 did not altogether destroy the principle of domicil in English law, as it had prevailed and been developed up to that time. The point has never been argued; but the state of the law is this. The doctrine laid down by the House of Lords in Moorhouse *v.* Lord, in 1863, was this:—You must intend, as far as you can, to become (*e.g.*) a Frenchman instead of an Englishman if you want to acquire a French domicile. You must intend to cease to be what you are, and give up everything you leave behind you. The common law did not allow a man *exuere patriam*; but at the same time the common law invented the doctrine of domicil, because it realised that some men might very legitimately desire to reside so permanently in a foreign country for family or commercial reasons, that it would be wise to allow them, as far as possible, to become subject to the laws of that country. But the condition which the law attached was that the man must intend *quatenus in illo exuere patriam*. In so far as his personal law was concerned, if this condition was satisfied, Moorhouse *v.* Lord, the last of a long series of cases in which the law had been gradually developing, decided that he might be considered a Frenchman. But with the Act of 1870 a British subject was allowed *exuere patriam*, and the *raison d'être* of the law of domicil ceased. A man could then do completely by statute what the law had with great ingenuity allowed him to do partially before. The reason for the stringency of the rules of domicil is perfectly clear; clearly such a fiction could not be allowed to prevail except subject to the most rigid conditions. The national law of England had to be protected, and unless these rigid conditions were fulfilled the man retained his original nationality. The fact is, and it is continually being lost sight of, that the law of domicil was invented for the protection of British nationality and not in derogation of it. The law yielded to the inevitable, but that is all; and if the old cases are studied carefully, and if I may say so, with this new suggestion to light them up, it will be seen how curiously domicil and nationality are inter-

woven, so as often, even now, to be indistinguishable. How far away from the original idea the principle of domicil as now administered is, may be gauged by the case of Mr. Winans. Lord Lindley described him as an American citizen permanently settled, domiciled, in this country.

The present law is, as may thus be seen, widely divergent from the law from which it sprang; and it has inevitably landed itself in a morass of difficulties; as is witnessed by Lord Halsbury's pithy sentence with regard to this very gentleman—that the conclusion he had come to, with regard to his domicil, was that he could not come to a satisfactory conclusion either way.

Further, I beg you to think what a curious terminology has been evolved out of this curious doctrine; such as "domiciled Englishman"! What does it mean? The man may be a Frenchman.

Briefly as to this point, I may say that the conclusion which I think anybody will arrive at after a close study of the cases is that domicil of original is confused with nationality, domicil of choice with naturalization.

In this connection, and in order to emphasise the confusion between the different ideas which exists, I should like to refer to a quotation from Bar used by Lord Watson in Le Mesurier's case: "The judge of "the domicil or nationality is the only competent "judge in actions of divorce." This quotation was used to support the view, laid down in that case, that domicil and not the matrimonial home is the basis of jurisdiction in divorce. Now Lord Macnaghten, in De Nicols *v.* Curlier, referred to a quotation from Sirey maintaining that the conjugal association as to property formed at the time of the marriage by the operation of the law "of the domicil or nationality" cannot be altered by a change of domicil or nationality. This quotation was used to support the decision that in that case the law of the nationality governed the question. You will observe that the expression "*domicile ou nationalité*" is used in both quotations. They are not alternative in English law, for all the decisions support domicil as against nationality. But to the French lawyer they are rightly used in the alternative, because, as I have already pointed out, the person *domiciliè en France* does acquire all the civil rights of the national.

VII. The third point I make is that the respective merits of domicil and nationality have never been, so far as I can ascertain, raised in the English courts. This is perhaps the most curious part of the case. Of course it shows how deeply embedded the idea of domicil is in English law; but the reason will, I think, more clearly appear if the considerations I have advanced are borne in mind. You will see in the judgments a most extraordinary confusion between the two terms "domicile" and "domicil," an imperceptible gliding from one to the other. The former is often used when the latter could not be intended, and as merely synonymous with residence, actual and not even habitual. I will not labour this point, but content myself with one illustration—Lord Justice Cotton said in Sottomayor *v.* De Barros,—"All persons are legally "bound to take notice of the laws of the country where "they are domiciled." With respect, this is not true unless domiciled means resident. There are literally hundreds of similar quotations in all branches of the subject. And here is the point of the whole story. The learned judges use the term "domiciled subjects" in connection with the application of statutes, which really means as little as "domiciled Frenchman," unless it merely signifies "resident subject"; but the books have derived from these references to "domicile" the rule that personal capacity is to be determined by "domicil."

Now, with regard to this third point, I take a well-known quotation from a case concerning the validity of a will which turned on domicil, De Zichy Ferraris *v.* Hertford, in which Sir H. Jenner Fust said,—"It is now "too late to contend that the succession to personalty, "testate or intestate, is to be governed by any other law "than the law of the country in which the deceased had "his domicile." But the dispute which that and a number of early cases settled was as between the law of the place where the will was made and the law of the domicile. The arguments would have applied equally if the dispute had been between the law of the place where the will was made and the national law, and it would have been given in favour of the national law. The dispute between the law of the domicil and the national law has never been settled, because, strangely enough, it has never been raised, though the recent case of De Nicols *v.* Curlier goes a very long way towards settling it in favour of the national law.

I will not further elaborate this point. I only beg the Commissioners to read, by the light of what I have said, some of the judgments; an old one like Sir John Nicholl's in Curling *v.* Thornton, or a modern one like Lord Justice James' in *re* Goodman's Trusts. I am sure that they will then agree with me that the law of the domicil and the national law have been hopelessly confused.

VIII. I come now to my second suggestion, that this Commission, without pledging itself to a general statement with regard to the law of the domicil, such as I have indicated as possible, may yet say that in the case of matrimonial matters the national law should be followed and the law of the domicil henceforward be discarded. I assert with confidence that all the hardships and anomalies to which the English law has given rise in the case of mixed marriages are attributable to the adherence of the courts to the law of the domicil.

Let me put the case quite broadly first. I have endeavoured to emphasise, what every lawer knows, the hopeless uncertainty of the law of domicil, as illustrated by the recent cases of Winans, Trufort, Martin, and Johnson, and the trouble and differences of opinion it has caused. They were succession cases. Whether the law be right or wrong in its application to property, matters little to the suggestion I am now making. But I ask again, is it right that this doubt and difficulty, and inevitable divergence of opinion, should exist in matters of so grave import as marriage, divorce, and the consequent legitimacy or illegitimacy of children? I submit for the most serious consideration of the Commissioners that if there is a doubt as to the soundness of the doctrine it ought at once to be swept away in its application to the family, quite regardless of whether it stays or goes in the other branches of the law in which it is applied.

Simplicity is certainly on the side of the national law. Except in rare cases a man's nationality is easily ascertained. I am free to admit that the English law of nationality is more productive of "double nationality" than the law of any other country; but, speaking generally, each country proclaims its own national law, and another nation, unless it clashes with its own, respects it. No country, although it may also claim a person as its subject, interferes or deals with the nationality of the people of other countries. But this is just what the English law of domicil does. It declares French subjects to have an English domicil, and this quite regardless of the continuance of their French nationality, which alone, of course, the French courts will recognise; it calls them "domiciled Englishmen." It abandons, where jurisdiction or the law applicable is held to depend on domicil, British subjects who fulfil its abitrary conditions, and calls them "domiciled Frenchmen," quite regardless of the fact that the French law, unless they have fulfilled the conditions of the Code, will have nothing to say to them.*

The recent cases I have just referred to show how difficult it is to determine a man's domicil; for, in the first place, it is not his but his father's, or perhaps his grandfather's, which must be sought. Then it is rarely a question which is or can be determined in a man's lifetime. If a question of change of domicil were in question, the courts would look askance at the man's own statements. He is really the most unreliable

* It may be that this term "domiciled Englishman," means only an Englishman who is domiciled in England, and "domiciled Frenchman" a Frenchman who is domiciled in France. But then the terms are equally meaningless, for the law of domicil as usually understood ignores nationality; it applies to a person "domiciled," whether he be English or French.

witness, strange as this must appear; for he may have ulterior motives: possibly, to enable his descendants to escape the death duties. So in doubtful cases the family archives must be ransacked; or rather, if the ancestor has lived in the tropics, so much of them as the damp and the white ants have allowed to remain. And then, what a rambling through a man's correspondence for indications of his real intentions. In all seriousness, a man's liking for the gooseberries which grew in a certain country was a factor to be considered, *faute de mieux*, in one leading case, Bell *v.* Kennedy.

IX.—(*a*) And now I put this question; I have put it to myself several times, and am not altogether satisfied with the only answer that I can find. Why does divorce jurisdiction depend on domicil? and why are the courts of the domicil said to have exclusive jurisdiction?

It has been said by many authorities that the relation of husband and wife is a status; and that therefore it follows that it must be governed by and subordinated to the law of the domicil, the domicil, that is, of the husband; therefore, dissolution, which is an incident of marriage, must be governed by the same law. This seems to me very unsatisfactory and inconclusive reasoning. If there is anything in the theory at all, I conceive that it must be founded on some supposed connection between the principle which determines the fact of capacity to marry and that which regulates the competence of courts to dissolve marriage. If the fact of capacity to enter into the relation of husband and wife is determined by the law of the domicil, then its continued regulation, so far as the new position of the parties is concerned, and its complete control by the same law, is at least logical and intelligible. But I have never seen it so stated. Yet if it cannot be so stated, the position is indefensible; at least, this position, that this law of the domicil should override the national law, which is the natural law by which you would expect such matters to be regulated, and which it does in many cases regulate.

We are, therefore, driven back to the cases in which the capacity to marry has been considered. I am compelled to tread here on well-trodden ground; but it is necessary to the complete understanding of the question.

(*b*) First, as to Sottomayor *v.* De Barros, as decided by the Court of Appeal.

The husband and wife were both Portuguese subjects; they were first cousins; they resided and were married in England, and a few years later returned to Portugal. As there was no Papal dispensation, the marriage by Portuguese law was incestuous. The wife petitioned to have the marriage declared null and void. To the lay members of the Commission, I suppose, it will seem remarkable that there should have been any difficulty about the matter. I have no doubt at all that if the parties had lived, even permanently, in France instead of in England, the decree, assuming the court held itself to be competent, would have been given without any hesitation; for the French courts, when foreigners come before them, administer their national law. To apply this to English people: if two English subjects married in France within the English prohibited degrees, the French courts, assuming the competence, would declare the marriage null. But let us see what happened in this case; domicil was introduced. In the Court of Appeal it was assumed that the domicil of the husband was Portuguese, so by this side-wind the Portuguese law was upheld; not because it was the national law, but because English law persisted in calling it the law of the domicil. In order to emphasise the point I am now making I must read a short passage from the judgment of Cotton, L.J., which is a good illustration of the confusion which exists between domicil and nationality; for myself, I do not think that this confusion existed in the learned judge's mind, for he was a great lawyer; it is due to the text-writers who have so interpreted what he and other judges have said. It is a general and well-recognised principle of law that "the question of personal capacity to enter into a "contract is to be decided by the law of the domicile, "and, as in other contracts, so in that of marriage, "personal capacity must depend on the law of the "domicile; and if the laws of any country prohibit "its subjects from contracting marriage and stamp a "marriage between persons within the prohibited "degrees as incestuous, this imposes on the subjects "of that country a personal incapacity which con-"tinues to affect them so long as they are domiciled "in the country where this law prevails, and renders "invalid a marriage between persons both at the time "of their marriage subjects of and domiciled in the "country which imposes this restriction, wherever "such marriage may have been solemnised." One word here is necessary to explain that although this was a case in which nullity was involved, the jurisdictional principle of domicil is the same as in the case of divorce. In fact, in some countries, such as the United States, the remedy in some cases where we should declare the marriage null, is divorce.

(*c*) Reverting to Lord Justice Cotton's judgment, omit the references to domicile and the case is a direct authority for the suggestion I am making, because it leaves the references to "subjects" intact. Let us see what the introduction of "domicil," as the text-writers have done, really means. It can only mean either that the prohibitions of the law of Portugal on its subjects cease to be operative when they fulfil the conditions of our marriage law in England, which is not true, or that the English courts refuse to recognise the law of Portugal in its application to its subjects unless they continue to fulfil a condition of English law about which Portuguese law knows nothing; this amounts to the intrusion of an arbitrary doctrine into the recognition of foreign laws, unwarranted in the most ordinary and lay acceptation of the word, and certainly not warranted by the comity of nations. The pith of the decision is contained in this remark of Cotton, L.J.: "If the Portuguese courts "would hold the marriage invalid, how can we hold it "valid"? There is no cranny in this sentence into which the law of domicil can creep. Of course, from the point of view of the national law, this is the crucial question: does the law of any country apply to its subjects abroad? In the instance, the law of Portugal does apply its prohibitions against what it deems incest to Portuguese subjects in foreign countries.

(*d*) But I have not done with the Sottomayor case yet. After the decision of the Court of Appeal, the Queen's Proctor intervened, and questioned the domicil of the parties. The case, therefore, had to be referred back to the Divorce Court to ascertain the fact; and Sir James Hannen found that the domicil of the husband at the time of the marriage was English. The President being thus seized of the case, proceeded to deal with it; and the facts being different in this respect from what they were in the Court of Appeal, it left him free to express his views, and in doing so he differed from the fundamental principle which the Court of Appeal had laid down. He doubted the application of the law of the domicil to personal capacity; he considered that it was a novel principle, and that authority was the other way. He adopted Sir E. Simpson's *dictum* in Scrimshire *v.* Scrimshire—"This doctrine of trying contracts, "especially those of marriage, according to the laws of "the country where they are made, is conformable to "what is laid down in our books, and what is prac-"tised in all civilised countries." He then held the marriage valid because it was contracted in England, where a marriage between first cousins is not prohibited.

(*e*) I must here say one word as to what I believe the law of domicil to be, because there is a marked confusion in the cases between "status" and "capacity." In ordinary contracts, say, by infants, the fact of infancy, the status of the person, is one thing; the capacity of infants, of persons with the status of infancy, is another. It may well be that each is governed by a different law: thus, the fact of infancy by the personal law of the party (as I think the national law, but according to authority the law of the domicil); the capacity of an infant to enter into a contract by the law of the place where the contract is made. But applying this to the facts of this case, there still remains the question whether, if status is involved at

all, which I very much doubt, that status is not the incapacity to marry; whether the prohibition to marry is not itself the status in its fullest form. To this extent I venture to criticise the decision; it certainly ran counter to the principle acted on by the Court of Appeal, which, as I say, if rightly understood, is in favour of the national law. But the moral of this little argument is this. Whether I am right in this assumption or not, whether the Court of Appeal laid down the doctrine of "domicil" which is always ascribed to it or not, what Sir James Hannen did was to sweep away the law of Portugal altogether, whether as the national law or the law of the domicil, and to substitute for it the law of the place of the contract, the law of the place where the marriage was celebrated. The finding that the domicil of the husband was English did not, after the fact was found, enter into the decision; it was merely the peg on which he was enabled to hang his dissenting judgment.

(*f*) I refer next to another well-known case, Simonin *v.* Mallac, but very shortly. The point involved was simply an appreciation of the meaning and true intent of French law. Was the requirement of the *acte formel et respectueux* by the Code, *i.e.*, the taking the advice of the parent, part of the ceremony of marriage, or did it attach a personal incapacity? I have never understood the decision, nor I believe have French lawyers. There was actually a judgment of the French courts declaring the marriage void; the parties were French, but the marriage took place in England; they were not even domiciled in England. The case really involves the most deliberate disregard of the national law; because, although we might think that the consent of parents only part of our ceremonial law, the French courts had declared that French law did not view the matter in the same light, but that the marriage, on the motion of the parents, might be declared void; and it had been declared void. I shall have to refer to part of Sir C. Cresswell's judgment presently.

XI.—(*a*) I now come to Ogden *v.* Ogden, and I trust that the noble Lord who presides will not think that I deal with it indiscreetly. I conceive that one of the reasons which has induced the Commission to include the question of domicil in their deliberations is on account of the almost inconceivable hardship which resulted from that case, which was looked upon by the Court of Appeal itself as the *reductio ad absurdum* of the existing conflict of law on the marriage question.

The court threw grave doubt on the proposition that the English courts admit a personal status and capacity dependent on domicil. If the case rested there my task would be an easy one. But it went further, and the Court of Appeal held, with Sir J. Hannen, that the place of celebration is the omnipotent law. I think I may briefly summarise this part of the decision thus. Marriage contracts are put on the same footing as other contracts; and not only is the incapacity to contract imposed on an infant by the law of his domicil rejected, but also the fact of his being an infant, this also apparently having to be determined by the law of the place where the contract is entered into. The same argument would apply to and ignore incapacities and variations of status created by the national law.

(*b*) I venture, in regard to this proposition, on the following remark. It is based on the assumption that the law of the place of contracting in fact applies to the parties. But it is by no means clear that the law as to capacity to contract marriage, *i.e.*, the law of prohibited degrees, does apply to foreigners in the country. Suppose, for example, that the marriage laws of Portugal were so drafted as to apply only to Portuguese subjects. Marriage laws are based on policy, Christian policy, of course; a State may think it sufficient to limit their application to their own people; on the other hand, a State may deem the matter of such infinite importance as to make them applicable to foreigners marrying in the country. Take the question of infancy first. It is, I suppose, clear that the English law of infancy applies only to English subjects, and to those subjects wherever they are. The English courts would be very surprised if a foreign court were, applying its own law, to hold an Englishman not of age, say, at 23, or of age, say, at 18. I shall apply this to the marriage laws directly.

(*c*) To sum up what I have said on this preliminary point of status so far: status is a different thing from capacity; status must be governed by the personal law, capacity by the law of the place of acting. This little dissertation was necessary in order to enable me to clear the ground, and to take the next step in the argument, which is this. Is it true to say that when the law of Portugal declares that a person may not marry his first cousin, it is a question of status at all, or even of capacity? Does it affect a man's status that he falls within an abstract rule of law that first cousins may not marry? He is subject to the law, as he is subject to any other law. It cannot be said to be a status that a man may marry somebody else's sister. How can being a first cousin to someone be a status? It is a misuse of terms. The real way of stating the case is this—I feel here on less delicate ground, for the point is suggested in the Ogden judgment. The marriage of first cousins, or within any of the prohibited degrees, is a prohibition lying at the foundations of the marriage laws of a country; the marriages are declared void. Then comes the next question. To whom does that law apply? To all persons in the country, whether foreigners or subjects? or only subjects? or to subjects abroad? Then come these questions: first, the interpretation of the law itself; secondly, the amount of recognition which another country will accord to it. This reduces the marriage law to the plane of other laws. In one case, that of its application to its own subjects, it can hardly be denied that the case for recognition is, by reason of the nature of the marriage law, very strong. I can imagine none stronger.

(*d*) Now, one case can be put out of question at once, the marriage of subjects in their own country. If such a marriage is not to be recognised, the foundations of international society would be shaken to the roots. But for this there is authority, that of Sir E. Simpson, in Scrimshire's case: "The law takes notice "of foreign marriage"; and in modern times, in Lord Halsbury's judgment in De Nicols *v.* Curlier: "It "is enough to say that two French subjects were "married according to the laws of France . . . . the "first thing to do is to see how the matter [of their "property] would be dealt with by French law." How on earth domicil can find room in this galley is to my mind incomprehensible. What right has English law to interpret the law of a foreign country for it, to refuse to accept its decisions, to say that it only applies to persons whom we consider to be domiciled in that country, when that country is in complete ("lamentable" perhaps Lord Wensleydale would have said) ignorance of what our domicil even means? I am not exaggerating; any question might arise in the English courts between two married French subjects, and on a suggestion being made, they might be led off into an inquiry whether or not the husband was domiciled in Russia.

(*e*) I may now go one step further. Those same Portuguese subjects may, as in the Sottomayor case, come to marry in England. Here obviously the place of celebration of the marriage comes into question; and it is here that the clear appreciation of the province of the law of that place has been lacking in the early decisions. The rules as to the application of laws generally are perfectly well understood; they are as applicable to marriage laws as to any others. You cannot say in a general way that foreigners may not marry in England, in violation of the laws of England, unless you can also say that on their strict interpretation those laws apply to the marriages of foreigners. It is as simple a legal proposition as can well be imagined; but the current of the decisions necessitates its amplification and examination.

(*f*) All law applies to all people in a country, aliens and subjects, in the absence of any express provision to the contrary. But some laws are drawn with such a provision. It is conceivable that the marriage law should be limited to subjects; for it must be borne in mind that, contrary to our own system of legislation, the laws of many continental nations are essentially

personal in their nature, personal, that is, to subjects. It is also conceivable that the marriage law should apply to all persons in the country, foreigners as well as subjects. Now, this proposition can hardly be denied, that if the law of a country forbids marriages within a certain degree, and if the law is not restricted to its subjects, a marriage had in the country between foreigners within that degree is void. The English marriage law—25 Henry VIII. c. 22—is precise upon the question of its application to foreigners, for the prohibited degrees are applied to any "person " or persons, subjects, or resiants of this realm, or " in any your dominions." If the law were not precise in its terms it would be a question of interpretation. I know the troublesome dicta in Brook *v.* Brook very well; but I venture on this proposition without fear, that this statute means what it says: that, to use Sir FitzJames Stephen's words, to interpret this statute you must read it; and that there is no warrant for the introduction of domicil into its construction.

(*g*) One step further; it is within the range of legitimate legislation for a country to regulate the marriages, other than as to the ceremony, of its subjects abroad. Portuguese law does; French law does. This means that the degrees prohibited by those laws apply to their subjects marrying abroad. Are we really to say that because we have not the same prohibitions in our law, therefore the marriages of those people are valid? It is conceded on all hands that the form and ceremonial law of the place where the marriage takes place must be complied with; but it is surely pressing the law of the place too far to say that because we permit it therefore we shall disregard the law to which these persons are, by the universal law of the whole world, subject. Why should we offer a premium to foreigners to come to England in order to disobey their national law? And what is the premium? That the children of the marriage will be illegitimate in their own country. It must be specially noted that the principle which sets up the law of the place of celebration ignores the intention with which the persons come to England; they may have resided here many years, or they may have come across the Channel expressly for the purpose.

(*h*) But I do not rest my contention on *a priori* with arguments. This I believe to be a sound legal principle—that express prohibitions, whether of the national law or of the place of the marriage, are superior to mere unexpressed permissions; and that the express prohibitions of either are entitled to recognition. This is not a question of status or capacity, but of express prohibitive provisions of the law. If the national law prohibits it, that should be recognised everywhere; if the law of the place of celebration prohibits it, that should be observed everywhere. It is sound jurisprudence that a prohibition applicable to the person in question should have more force given to it than a tacit permission. The only difficulty is where the prohibition is in the law of the place of celebration and the permission is in the national law, and the question arises in the national courts. I am by no means certain that the national courts of continental countries would not hold such a marriage void. The general criticism which I should pass on the decisions is that the much-vaunted comity of nations entirely disappears when they come to deal with the marriage laws.

(*i*) It is more than curious that the argument which I have advanced was in fact used by Sir Cresswell Cresswell in his judgment in Simonin *v.* Mallac; but how he arrived at the conclusion he did after stating the constitutional questions so accurately, I have never been able to understand.

(*j*) What I have said of course applies where both parties to the marriage are subject to the law in question. Another consideration arises in the case of mixed marriages. It does not seem necessary to elaborate the question here; but I believe that the only way out of this difficulty is to adopt the principle on which the courts have acted in other matters, as was in fact done in the Ogden case, that they will not recognise a foreign law which works injustice to their nationals. I have gone into this at some length elsewhere it is somewhat complicated, and I think it will be sufficient for me to indicate the conclusion at which I have arrived—that where it is a case of express prohibition on one party and of tacit permission on the other, then that the law of the place of celebration should prevail if that also is the national law of one of the parties; but not merely because it is the law of the place of celebration, but because it is the national law operating within its natural sphere of action.

(*k*) That these principles do not quite coincide with Brook *v.* Brook, decided in 1861, is obvious. That was the deceased wife's sister case, where the parties were British subjects, and the marriage was had in Denmark, where such marriages were lawful. The judgments literally teem with most confusing references to domicile, and there is an undoubted suggestion that the Act of Henry VIII. only applies to English subjects abroad if they are domiciled in England; as I have already indicated, it is difficult to find a warrant for such a principle. I have discussed it at such length, that I shall not weary the Commission by repeating what I have said elsewhere. I shall therefore content myself with saying, that in all the decisions which occurred before the passing of the Naturalization Act in 1870, as this one, it is essential to find out what the learned judges meant when they used the word "domicile." I have already said sufficient to indicate my opinion that *then* "domicil,' of origin at least, was identical in law, as it was so often in fact, with nationality. But putting this on one side, the references to the divine law are peculiarly difficult to deal with; but I believe the decision really means this—that if an Act of Parliament declares something—as the Act of Henry VIII. did—to be contrary to God's law, that in itself must be taken as indicating the intention of the Legislature to make it apply to British subjects abroad.

XI. You will probably expect me to say something reference to incestuous marriages and polygamous with marriages. The rule laid down in Hyde *v.* Hyde—the Mormon case—has been much misunderstood. Lord Penzance expressly limited it to a refusal to apply the English matrimonial law to marriages not framed on the scale of monogamy. Putting this on one side, the idea conveyed by the rule as usually stated refers to marriages which are incestuous according to the general laws of Christendom. It must, however, be remembered that marriage within prohibited degrees is, in the eye of the law which proclaims those degrees to be prohibited, incestuous. And as the Christian States differ in their appreciation of what degrees ought to be prohibited, it is quite useless to set up a standard which in fact is no standard at all. Story has much to say on this subject; but it has practically been disapproved. Lord Wensleydale, in Brook *v.* Brook, said that it was a question for the municipal law of each country to determine what it considered incest. In a recent case, *re* Bozelli, it has been definitely decided that so far as the States of Christendom are concerned, their views with regard to their own subjects must prevail, and their marriages are not to be refused recognition because their law differs from ours. It was a question there of a marriage between an Italian with her deceased husband's brother, also an Italian. International society could not continue if we judged of such marriages by our own law. I will add that it could not continue if we interpolated the law of the domicil, for that would allow two English subjects to marry in like circumstances if they chose to acquire a domicil in Italy.

Before I pass from the recognition of marriages, I desire to refer to the facts in Ogden *v.* Ogden, in order to meet what will probably be urged against the remark I have made that domicil is responsible for all the troubles which arise in connection with mixed marriages:—If the Court of Appeal rejected the doctrine of domicil, how can that doctrine be held responsible for the catastrophe which came about in that case? Of course that case shows the absolute necessity for defining with precision the basis of the law of recognition of marriage. But domicil is more than indirectly responsible for what happened; for it so permeates the early decisions that it was inevitable that the case should bristle with references to domicil, and it may have in some measure influenced the actions of the parties, for the Englishwoman was domiciled in England, the

Frenchman was domiciled, as we call it, in France. The French marriage was annulled by the French courts because the husband had not obtained the parent's consent; he was therefore free by the law of France, and he married again in France. As in Simonin *v.* Mallac, the French decree was held not to affect the marriage *quoad* the wife; therefore she was obliged to treat this second marriage as adultery and desertion, and petitioned the English court for dissolution. The court—wrongly as the Court of Appeal held—decided that it had no jurisdiction, and dismissed the petition. So the English marriage remained. And then the unfortunate woman married again, and her husband subsequently petitioned for a decree of nullity, on the ground that this marriage was bigamous, which by all the law and the precedents it was. Is it not piteous that the law should play such havoc with the lives of men and women? The weak point of the law is of course the non-recognition of the French decree that the first marriage was void. Has domicil nothing to do with this, in spite of its abandonment by the Court of Appeal? I think it has; for it has so tangled the law that judicial wisdom can scarcely unravel it. It has led to the assertion of the law of the place of contracting the marriage. Substitute the national law, and then we get to a clearer position, which is in fact recognised in the judgment, a foreigner prohibited by his own law from marrying; the marriage must then be entered into by the other party at his or her peril. But there is still lacking the recognition of the national law in the declaration by its courts that the marriage was void. The marriage was celebrated in England, and the ceremonial law of England having been complied with, the English court declined to recognise the operation of the foreign law because it was to the prejudice of an English subject. The only criticism which I venture, with great respect, to make is, whether in the circumstances it was really to the prejudice of the English woman; for it was the non-recognition of the French decree which led to all the prejudice she suffered, apart of course from the unfortunate fact that she had represented herself as a widow. But nullity of marriage is not the legal penalty for a lie.

I must at this point refer very briefly to the "Marriages with Foreigners Act," passed in 1906. The view which I take of this statute is that it is a most important step towards simplification of the law governing mixed marriages; and the step taken is the direct recognition of the national law, for all the proceedings which it is contemplated are to take place when treaties have been made are based on this law. It is a fact, however, that the Act does not expressly say that if the formalities are fulfilled the marriage will be recognised. I suppose that such an express declaration is left to the treaties. The spirit of the Act seems, however, to be in favour of recognition; for it is hardly to be imagined that if the law sanctions the celebration of a marriage if certain formalities are fulfilled, that the courts will say that they will not recognise it. When a treaty is entered into with any country, I think the operation of the decisions in Sottomayor *v.* De Barros, and Simonin *v.* Mallac will vanish in respect of marriages between British subjects and subjects of the other contracting country.

In order to emphasise the fact on which I have dwelt, that there is a direct recognition of the national law in many cases which are treated as authorities for the application of the law of domicil, I add one more quotation, from Lord Selborne's judgment in Harvey *v.* Farnie:—"Let it be granted (and I think it is well "settled) that the general rule internationally recog- "nised as to the constitution of marriage is, that where "there is no personal incapacity attaching upon either "party, or upon the particular party who is to be "regarded, *by the law to which he is personally subject, "that is, the law of his own country*, then marriage is "held to be constituted everywhere if it is well "constituted *secundum legem loci contractus*."

XII. I now, at length, come to divorce.

I have endeavoured to account for the prevalent idea that the jurisdiction in divorce is based on domicil by tracing it back to the rule that domicil governs the capacity to contract marriage. I know of no case which supports this view; but I know of no case which explains the law on any more reasonable hypothesis. As I have already said, the mere statement that marriage induces a status of husband and wife in the parties, and therefore introduces the law of domicil, is inconclusive.

The importance of knowing what we are talking about when we say that jurisdiction in divorce is based on domicil, is emphasised by the fact that Ogden *v.* Ogden, by denying that capacity to contract marriage depends on domicil, destroys the first ground on which the basing of jurisdiction on domicil can be supported. It throws open again the old discussion whether the jurisdiction to divorce is not to be governed by the law of the place of the contract, seeing that that law is to decide on the validity of the marriage and the capacity of the parties to contract marriage. If this is not so, then there is no other law competent to decide the question but the national law of the parties.

The question is somewhat complicated by the fact that exclusive jurisdiction is claimed for the courts of the domicil; but I will not say more on that point than this—that it has never been satisfactorily explained why this law of the domicil should not be enforced in divorce by another court, in the same way as the law of the domicil is enforced by other courts in cases of succession. But the relation of jurisdiction in divorce to capacity to contract marriage is so important a point that I venture to re-state it. The general proposition is that status is governed by the law of the domicil; the relation of husband and wife is a status, therefore it is said that it follows that that relation must be governed by, and subordinated to, the law of the domicil, that is, the domicil of the husband. But if we start from the other end—the question whether the fact of capacity to enter into that relationship exists determined by the law of the domicil—then its continued regulation of the man's new position, to which the wife's new position has been joined, is intelligible. There must be some connection between the principle which determines the fact of the capacity to marry, and that which regulates the competence of the courts to dissolve marriage; and the fact that domicil should hitherto have been taken as the guiding principle for both cannot be merely fortuitous. This position is logical and intelligible when we substitute the national law for the law of the domicil, because we have no longer to deal with theory, but with the fact with which we are familiar, that the national law of many countries does in fact profess to govern the capacity of its subjects to marry, to regulate the degrees within which their marriages are permissible, and to determine the cases in which they may be dissolved. The link which I have imagined between the permissive creation of the marriage tie and its compulsory dissolution does therefore exist in fact when we turn to the national law.

Now, here I must begin, as I did before, with a very simple case. Two French subjects marry in France, and the marriage is subsequently declared void, or is dissolved by the French courts. This divorce must be recognised; and, as I said before, the English courts have no right to raise, or allow to be raised, a preliminary discussion as to domicil, whether, for example, the husband is domiciled in Russia, because the law of France pays no regard to such a consideration.

Of course the next point which arises is whether a court in one country can dissolve a marriage contracted in another. This is the old problem which, because he did not answer it aright, sent Mr. Lolley to prison; and, as I say, it must be revived if the law of the place of the contract is to be the law governing capacity to marry.

The decision in Lolley's case was that the Scotch courts could not affect the status of married persons domiciled in England. The decision in Harvey *v.* Farnie was that where the parties were domiciled in Scotland a Scotch divorce is valid, and ought to be recognised in England and by all other countries in the world. This means that in divorce nationality has no place, any more than the locality of the marriage. What the law says, therefore, is that even though the

marriage of two foreigners is indissoluble by their own law (which English marriages were, except by Parliament, in Mr. Lolley's time), yet if they acquire what English law calls a domicil in England, the English courts may dissolve it. Or, supposing that, by the national law of the parties, that is, the husband's national law, it can only be dissolved for certain grounds, it may be dissolved for grounds known to English law but unknown to the national law; or yet, again, that it cannot be dissolved for grounds known to the national law if they are not known to English law. All that I have said with regard to domicil in connection with the interference with the national law by domicil in marriage is equally applicable here, and need not be repeated. And the Lords, in Harvey *v.* Farnie, discovered other grave objections. "Domicil" means both domicil of origin and domicil of choice; the rule is as applicable to the one as to the other; but domicil of choice leaves open the door too wide to deliberate evasion of the national law, or, it must be added, even of the law of the original domicil.

This introduction of free-will into so serious a matter seems to me the most fatal of all the many objections to the law of domicil. In the most important affairs of human life, those which affect a man at his birth, in his manhood, at his marriage, and after his death (in his succession), are, according to this this theory, governed by a principle which allows so great a play to free-will, that theoretically a man may select his own law after he is of age; and before that the law which governs him depends on his father's good will and pleasure. I say theoretically, because the one safeguard against the evil consequences of the principle is that people know very little about it, or of the powers that it gives them. The Lords in this case hammered, if I may use the expression, at the subject, because they saw how fraught with danger the doctrine was, how difficult to test the *bona fides* of the change. And in Niboyet *v.* Niboyet, a later case, James, L.J., declared it to be "a violation of every principle to make the "dissolubility of a marriage depend on the mere will "and pleasure of the husband, and domicil is a matter "entirely of his will and pleasure."

Perhaps it may be said that you may change your nationality at will, and therefore the same argument applies to the national law if that were to be substituted for the law of domicil. But there is all the difference in the world. Naturalization is performed openly, *coram populo*, and is admitted by all nations. Change of domicil may be accomplished secretly; so that none of the family even who are affected by it may know. In all seriousness, a new domicil may be acquired without the man knowing it himself.

I have criticised domicil of choice; but it must not be assumed that domicil of origin can pass free of criticism. Stress is always laid on the necessity in matrimonial affairs of their being governed by the law of the domicil, because it is the law of the community among which the person resides, or may be supposed to reside. If this were true, there might be something to be said for the doctrine. But it is often untrue, nearly always in hard or difficult cases. We have only to remember the case of Colonel Udny, whose domicil of origin was Scotland. He then acquired a domicil of choice in England when he settled down for good in Belgrave Square; but this he lost when he went to Boulogne to escape his creditors; and as he did not acquire a domicil there, for he always meant to return, but not necessarily to Scotland, his domicil of origin in Scotland revived. What interest had the Scotch village community where he was born in his subsequent proceedings after he had gone south? yet the legitimacy of his children depended on whether he was domiciled in Scotland.

Again, the effectiveness of the doctrine which gives such emphasis to the interest of the community is destroyed by the weight which is given to the ultimate intention to return home. If a community is really interested in the matrimonial affairs of those who form part of it, surely the inhabitants of the Edgware Road must have been interested in those of Mons. Loustalan, the successful French laundryman who "got up" the shirts of the nobility and gentry of the neighbourhood for so many years in the best French fashion. Yet that desire which lurked at the back of his head, that some day, when the limiting period for an offence against French law had wiped it out, he might return to France, a desire which might never have been fulfilled, led the court to find that he was not domiciled in England. The facts in *re* Trufort presented a curious little puzzle to the court; *re* Johnson showed the law world that domicil was capable at its worst of producing, when it clashed with a law which recognised the national law, that most puzzle-headed doctrine which is known as the "*renvoi*." These cases are the despair of lawyers; they might be tolerated, perhaps, if only property were in issue; but a wider, deeper, more terrible issue hangs upon them, the legitimacy of children. Lord Justice James, in the picturesque language of which he was a master, inveighed, in *re* Goodman's trusts, on the iniquity of a law which should not recognise the legitimated children of the thousands of aliens who come to our shores; the law of domicil is as capable of as grave iniquity.

I have not wandered so far from the law of divorce as may be imagined, for the Court of Appeal, in Niboyet *v.* Niboyet, made an effort to break away from the rigid application of the law of the domicil, and to set up a jurisdiction based on the matrimonial home. The doctrine lasted some time, till it was ruthlessly destroyed by the Judicial Committee of the Privy Council in Le Mesurier's case; but was again set up, so far as judicial separation is concerned, by the Court of Divorce in Armytage *v.* Armytage.

With regard to Le Mesurier's case, I have only to draw the attention of the Commissioners to the point involved, which I referred to in my oral evidence in connection with the jurisdiction of the Colonial courts. If they have no jurisdiction in divorce, as in this case it was held they had not, because the husband could not acquire a domicil in the Colony, the hardship on the wife is very great; for she must come to England, assuming that to be her husband's domicil, if she wants the redress which the law of England gives for the marital offence of the husband. Think what this pursuing of the husband to the court of his domicil means; the cost of it, the inconvenience of it; the children left at home in the Colony; the evidence on commission; the hundred and one details of a suit brought in a country in which the petitioner does not live, against the husband who holds the purse strings.

The question is too important for me not to elaborate it slightly. Take such a case as Brodie *v.* Brodie. A husband and wife were domiciled in Australia, but were residing in England. The English court entertained the wife's petition in respect of a marital offence committed in Australia. In Hume *v.* Hume, a divorce was granted to a wife by the Scotch courts against a husband who had been living in America for 17 years, and was at the time living with a woman whom he had married there. He had in fact acquired a domicil there. But these cases were disapproved by the Privy Council because the jurisdiction was exercised by a court which was not the court of the domicil. What is the result? In order to sue him the wife must pursue him to the courts of his domicil, which may be Australia, where he may not be living; so that a suit must be brought, in such a case as Brodie's case, in a country where neither party resides. The hardship stops there in the case of our Colonies, always supposing the court of the Colony where the domicil is to have jurisdiction. But in the case of a foreign country, the hardship may be infinitely worse, for it may deny the wife a remedy altogether. Hundreds of English people are what we call "domiciled" in foreign countries. Our courts would refuse to entertain petitions for divorce between them, and would leave them to the court of their domicil; and this court, for reasons which I have so much dwelt on, being in complete ignorance of what the English law means, would in many cases have nothing to do with the matter, but leave them to their national courts, which have already declared they have no jurisdiction. This is one way to make the marriage tie indissoluble; but it acts in diametrical opposition to a law which

declares that for certain causes the marriage tie may be dissolved.

A shadowy principle is gradually shaping itself in our courts which may give some relief from this state of affairs: the recognition in certain cases of an independent domicil of the wife. But it has not yet acquired the precision of the doctrine as it is enunciated by the American courts, which have laid down the principle that where the wife is deserted she retains her old domicil. The English principle is that the husband cannot be allowed to assert for the purposes of the suit that he has ceased to be domiciled in this country. It is something, but insufficient to meet the case entirely.

I must apologise for the extreme length to which this diatribe against the doctrine of domicil has extended, and yet also for the manifold points which it has left untouched, for there are many things yet to be added to what has been said, which will be found elsewhere.

I think it may be useful to the Commission if I conclude with what I believe to be the history of the jurisdiction in divorce.

XIII. Parliament does not appear to have been guided by any such definite principle as domicil in passing private divorce legislation; nor were the Ecclesiastical Courts in the exercise of any of their matrimonial powers, which fell short of divorce *a vinculo*. In the Act of 1857, no definition of the jurisdiction of the new Divorce Court was given; and Lord Campbell, then Chancellor, declined to introduce one. He is reported to have said to Sir C. Cresswell: "I cannot do it. "Whenever that question is raised, it must be decided "upon legal principles. It cannot be defined" (Forster *v.* Forster). This must have been about 1860, when the competence of the court had already been much discussed, the tendency of the decisions being very pronounced in favour of accepting domicile as one of the tests. This, the Commissioners will remember, was before the passing of the Naturalization Act in 1870. The question was referred to by the Full Court of Divorce, in Ratcliffe *v.* Ratcliffe (1859), when Lord Campbell, then Lord Chief Justice, presided. It seems fairly clear, however, that "domicil" was intended, and not some form of residence, such as is so frequently meant when the word "domicile" is used. Though, from Deck *v.* Deck, I doubt if this extended to the recognition of foreign jurisdiction based on domicil. But there seems to have been some doubt whether domicil was the sole test of jurisdiction; for in Ratcliffe's case Lord Campbell said that it was not necessary "to define "the extreme limits of the jurisdiction of the courts"; and in Forster's case (1863) Sir C. Cresswell, the Judge Ordinary, prefaced the remarks already quoted by saying, "I should have been very glad indeed if the "Legislature had said that the court had no jurisdiction except over persons domiciled in England."

In 1878, the doctrine of the matrimonial home was laid down by the Court of Appeal, in Niboyet's case, as the test of jurisdiction, based on the construction of the Act of 1857.

In 1882, in Harvey *v.* Farnie, domicil was asserted by the House of Lords as the test of jurisdiction of a foreign court dissolving a marriage which the English courts would alone recognise, though not without considerable hesitation.

In 1895, the Judicial Committee, in Le Mesurier's case, discarded the matrimonial home as not warranted by the Act, and re-established domicil as the test of English jurisdiction, ignoring the doubts which the Lords had expressed in Harvey *v.* Farnie; and emphasising the importance of the rule of English jurisdiction coinciding with the rule of recognition of foreign jurisdiction.

In 1898, some of the *dicta* in Lord Watson's judgment in Le Mesurier's case were questioned by the Divorce Court, in Armytage *v.* Armytage, and the matrimonial home was re-established in judicial separation.

In 1906, the Court of Appeal, in Bater *v.* Bater, approved of the rule of jurisdiction being extended to domicil of choice; and in the same year the Divorce Court, in Armytage *v.* Attorney General, pressed the doctrine so far as to recognise a foreign divorce, which it would not otherwise have recognised, because it was proved that the courts of the domicil would have recognised it.

On the other hand, in the following among other cases in which the personal law has been discussed, in divorce and other matters, there are references to "domicile" or "domicil" which are hardly intelligible if they are not intended to refer to the national law.

Simonin *v.* Mallac: judgment of Full Court of Divorce.

Sottomayor *v.* De Barros: judgment of Court of Appeal.

Brook *v.* Brook: judgments of the four Law Lords, as to the operation of English prohibitions against marriage.

Munro *v.* Munro: judgment of Lord Cottenham, as to the operation of the national law of ligitimation.

Re Goodman's trusts: judgment of James, L.J., as to the recognition of the national law of ligitimation.

Harvey *v.* Farnie: judgment of Lord Selborne, as to the recognition of the national law of incapacity to marry.

Finally, Deck *v.* Deck, in which the Full Court of Divorce (Martin, B., Willes, J., and Sir C. Cresswell) laid down the broad doctrine that domicil cannot override allegiance; nor the acquisition of a foreign domicil excuse disobedience to an English Act of Parliament.

As Lord Penzance said in Wilson *v.* Wilson, it is an obvious necessity that a satisfactory canon of international jurisdiction should be established in divorce cases. I am stating what I know to be floating in the minds of many lawyers when I say that so long as domicil is retained as the basis of jurisdiction, that canon can never be attained; because, and I cannot too often insist on this, our idea of domicil is absolutely unknown in continental law, or at least the greater part of it, and to the minds of continental lawyers is so curious that they cannot begin to understand it or appreciate its meaning. "It is both just and reason-"able," said Lord Penzance, "that the differences of "married people should be adjusted in accordance with "the laws of the community to which they belong, and "dealt with by the tribunals which alone administer "those laws. An honest adherence to this principle, "moreover, will preclude the scandal which arises when "a man and woman are held to be man and wife in "one country and strangers in another." But "the "community to which they belong" is in foreign law the nation to which they belong; even in English law it is often in fact not the law of the domicil, as Colonel Udny's case shows. The one community to which a man belongs is his own country. That this was the meaning of domicile among the old lawyers I believe to be the fact; and even now it is, I think, manifest that most learned judges revert to that original idea. I am certain of this, to conclude with the opinion with which I started, that the English law of domicil is responsible to a very large extent for the scandal to which Lord Penzance referred; and, as I said in my oral evidence, that the direct consequence of the doctrine is to encourage the solecism that a man and woman may be married in one country and their children legitimate, and unmarried and their children bastards in another, against which so many eminent judges have inveighed, more especially when that other is the country to which they owe allegiance.

Mr. JOHN ROBERT ROBERTS recalled and further examined.

(*Chairman.*) I think that the very interesting figures which you were giving us when we adjourned last night might be a little more comprehensive, if I may use the term, in form, if you will allow me to put them in a different way. They are so interesting and important that I want to get them very clearly before the Commissioners. First of all, will you take the Civil and Judicial Statistics for 1907, and you will find

hat the total number of separation orders granted, using that term in the sense of all orders granted, is 7,158. I dare say you remember that figure?

(*Sir Lewis Dibdin.*) Would you mind telling us what page this is on?

(*Chairman.*) Page 166.

(*Witness.*) Until last night I had not seen those figures.

8311. (*Chairman.*) It is the same as your proof, which I am coming to in a moment, but I want to get it quite plain. Part 1 of the Criminal Statistics of the same year has two tables?—Those being the statistics which I have myself quoted.

8312. Those being the statistics you have referred to?—Yes.

8313. Part 1 deals with the subject of the proceedings and also in respect of orders enforceable as if convictions?—Yes.

8314. Part 2 deals with other quasi criminal orders, and includes, amongst others, miscellaneous orders. If you will kindly follow me, I think that we can get this very clearly before the Commissioners. The number of applications by married women for maintenance orders under the Summary Jurisdiction Act, 1895, section 5, and the Licensing Act, 1902, was 11,164?—That is so.

8315. They called them there, maintenance orders, but obviously they are referring both to maintenance and separation?—All applications under those Acts.

8316. The next thing is the number of orders made in column 3 of that Part 1. Out of those 11,164 applications it is 7,543?—Yes.

8317. I leave out how enforced, by imprisonment, as it only confuses it. Then, under the heading miscellaneous orders in Part 2, I think you will find that we get to where the confusion in the tables has to some extent arisen. Separation orders, therefore, are put under the heading of miscellaneous orders?—Yes.

8318. These orders are separated into orders granted to husbands of habitual drunkards, and the total number of those is 262; orders granted to wives of habitual drunkards, 120?—Yes.

8319. Orders granted to wives from other causes under the Summary Jurisdiction Act, 1895, 6,776?—Yes.

8320. Which together, namely, 262, 120 and 6,776, add up to 7,158?—Yes.

8321. That is the figure you have in the Civil Statistics?—I follow that.

8322. That is quite clear?—That is quite clear to me.

8323. That shows—we may leave out the habitual drunkards for a moment and keep the other point clear—that all of those orders to wives are treated under the heading of separations?—Yes.

8324. I want to get one other figure before I complete what I have to get from you. Those 7,158 orders were the result of, in the case of husbands of habitual drunkards, 458 applications, and in the case of wives of habitual drunkards, 258 applications, and in the case of orders from other causes, 9,736?—Quite so.

8325. That is right?—I think that is right.

8326. The only thing I do not see quite clearly here is how Part 1 is in accordance with Part 2 as to the actual figures given?—They ought not to be in accordance.

8327. I think they ought to be. The number of applications, for instance, under the two Acts in Part 1 is put down as 11,164, and in the miscellaneous orders it is put down as 10,452?—I do not think that they should be in accordance, for this reason: Part 1 includes all applications.

8328. Part 1 is maintenance orders under the Summary Jurisdiction Act of 1895 and the Licensing Act of 1902?—All applications under those Acts.

8329. But when you turn to Part 2 all the applications under those Acts only amount to 10,452?—Because they are for separation only,

8330. No, excuse me, I think you are wrong?—I do not think I am, my Lord; it says so.

8331. I think you must be wrong. We know from what you have told us that these orders made on those applications include both kinds, namely, maintenance and separation?—No, I have not said that.

8332. I want just to clear one point before I go to the new point, the total number of applications is rather more in one column than in the other?—I should expect it to be, because the first part contains all the applications made under the Act, whether separation is asked for or not and the orders made thereon. In the second portion, according to the heading, there should only be the applications for separation and the orders made thereon.

8333. You mean there have been some in which they have not put in an application?—Yes, I should expect the second portion to be less.

8334. It is not very much less, because it is put in in the form of the application. That shows where you get your original figures from?—Yes.

8335. And it brings us abreast of seeing the two sets of tables, the civil and the criminal?—Yes.

8336. It enables us to follow out the results which your figures of yesterday are helping us to reach. Before the case of Dodd *v.* Dodd, the magistrates made, as a matter of ordinary form, the order for separation and maintenance of wives?—I should say in practically all cases—not entirely.

8337. So that up to 1906, wherever you see the figures, they have treated both of them. If they had had their minds brought to it they might have separated them?—Yes.

8338. Since 1906, when I drew attention to this by the judgment I delivered in Dodd *v.* Dodd, the magistrates have acted differently. Many at once acted differently, and others gradually, in course of time?—Gradually.

8339. With the result that when they make the order they make it for maintenance where that only is required, but where separation also is required they make it for separation as well?—I should say that that practice obtains in the majority of cases, not necessarily going to the extent of your opinion, but using a discretion.

8340. At any rate that had a very marked effect?—The principal reason of their doing it being, that in the event of subsequent divorce proceedings, the separation being granted might prejudicially affect the husband or wife.

8341. If they make an order which has the effect of separation it puts an end to the desertion if our views are right, and they cannot utilise that at all afterwards as a ground of divorce. That is the point?—Yes, but we do not go as far as the opinion expressed in your report in my own cases, that a simple order for maintenance may be sufficient.

8342. Quite, because there are cases where they want the separation as well?—And where the safety of the children, or the comfort of the children and the wife, make it necessary.

8343. I follow, but the general effect is——?—That there is now a difference.

8344. You broadly separate the cases in which maintenance only is required from those in which protection is also required?—Yes.

8345–6. The result, as I have followed your evidence, is that the large figure of 7,158, which I will adhere to, is inclusive of those which are only maintenance, as well as those which are maintenance and separation orders?—I judge that is so, not from the fact of seeing the figures there, but from finding in my police returns, which are a constituent part of those figures, that cases simply of maintenance orders have been included in that column.

8347. You consider it a right inference to draw that the words "separation orders" in this miscellaneous column include both?—Yes, judging by my personal experience of the compilation of the police statistics in Newcastle, and from what I have been told, that the same practice obtains elsewhere.

8348. I am not in the least quarrelling with what you say, but I want to get it clear on the notes, as it strikes me it is extremely important?—I do not get these individual police returns, but through the courtesy of the Chief Constable of Newcastle I have some, and I am surprised to find in the majority of them that the figures under the two tables coincide even now.

8349. Let us get on to what it shows. You find from your own statistics that the total of your orders may be divided up into two classes, one in which there is maintenance and the other in which there is separation?—That is so. That is what I have actually done.

8350. You infer from that, coupled with the other cases of returns which you have had, that the 7,158 may be similarly divided?—I think so.

8351. Do your tables enable you to give us approximately how many of those 7,158 you think are for maintenance only?—Not outside my own court.

8352. I thought you said you had returns from several other towns, which you mentioned, which assisted you to see what percentage there might be likely to be?—Yes, although I have not analysed those returns, but I think the figures could be got.

8353. You are going to give us those. Let us get it generally, it is quite enough. How much, judging from what you have gone into yourself, should you estimate was the percentage of the 7,158 that might be put down as merely maintenance orders?—I should think probably 25 per cent., but I have no data.

8354. That is near enough. Those figures, and those you have got from other towns, would probably show that?—Yes, I think so.

8355. We might say that the 75 per cent. left would be both maintenance and separation included in the orders?—That would follow, if I am right in that.

8356. That enables us to get on a good deal further. As I understand you to say, if we take the whole of these figures, the 7,158, in many cases the parties are reconciled?—Yes.

8357. In many cases the orders are not taken up?—In my own court, 75 per cent. of the orders made were never taken up at all, or at any rate, never acted upon.

8358. In many cases you said they were reconciled even when taken up?—Yes.

8359. Can you tell us approximately again, by percentages if possible, how many orders for separation were not taken up?—I can tell you that only in Newcastle. I find that last year we made 45 orders.

8360. For separation?—For separation. We made altogether 94 orders, in 49 of which maintenance only was granted, and in 45 of which separation and maintenance combined.

8361. Can you tell us how many of those 45 orders were not taken up?—31 were not taken up or acted upon.

8362. I want to know how many out of the 45. I do not want there to be any confusion about this. I am keeping only to separation orders?—We granted 45.

8363. You said you granted 94 orders altogether, of which 49 were for maintenance, and 45 you said were for separation?—31 of the 45 were not taken up.

8364. Does that mean only 14 were acted upon?—Yes.

8365. Of the separation?—Of the separation.

8366. Can you tell us how many of the maintenance orders were not taken up?—They would practically be for desertion only.

8367. Yes, practically?—Yes; it would be. There were 34 not taken up or acted upon.

8368. Very much the same number?—Yes.

8369. In many cases you think the parties are reconciled afterwards?—Yes. Of course I am in a better position to judge where money is paid through the court than in other cases where it may not be paid through the court.

8370. Does that enable you to get at any approximation, coupled with the figures you have from other tables, as to how many of these 7,158 are orders that are not taken up. You said 75 per cent. might be orders for separation. How many of that 75 per cent. do you think were not taken up?—I could not say, but I have called attention to some particular towns which I have taken.

8371. Those are the ones you gave us yesterday?—Yes.

8372. The figures you gave us yesterday, coupled with your tables, will enable us to appreciate the details of this a little more?—I think so.

8373. The broad point I think I have now pretty plain from you, is this: that although 75 per cent. of these orders, 7,158, may be made for separation, a very large proportion of those is not taken up?—Undoubtedly.

8374. And in others they are reconciled?—Yes.

8375. Where did you get the figure of 1,700 from which you mentioned yesterday?—I start first of all with that number, the 7,158, and from that I take, by inference, a certain number owing to the error in the compilation of the statistics, based upon what I find in Newcastle, and then I take the balance of the deductions, being represented by the cases that I find in my own court and in the other courts where reconciliation takes place. You deduct that from the 7,158, and it leaves 1,790 as the probable amount of actual permanent separations.

8376. Permanent separations?—So-called permanent separations, because they may be reduced as time goes on. That is for the year 1907.

8377. Have you the figures which work that out, so that we may see them, if necessary, afterwards?—75 per cent. is my own personal experience in Newcastle, so that I have not placed it higher than that.

8378. What do you say 75 per cent. is?—In 75 per cent. of the cases in Newcastle the orders were not taken up or acted upon last year, and I do not go higher than that, I do not go higher than my own individual case. In making the deductions I take 75 per cent. of 7,158, not going higher than in my own case.

8379. The only difficulty I see in following your figure is this: you take 75 per cent. off orders which are both for maintenance and separation?—In the table they are put down as separation.

8380. You are taking the 75 per cent. off both classes?—I take the 75 per cent. off the 7,158, which are stated to be the orders made in 1907 for separation.

8381. Judging by your experience, you conclude that you may take that off for orders not taken up?—I do; for orders not acted upon.

8382. With the result that you get 1,790 cases in which there is a permanent order?—An order that is for the time being, as it were, permanent.

8383. Are those cases in which the order stands for separation?—For separation.

8384. Not merely maintenance?—No, for separation.

8385. (*Sir Lewis Dibdin.*) Would it not be more accurate, instead of saying permanent order, to say whether taken up?—I cannot say that, except in my own case, because I do not know whether they are taken up or not in other cases, but in my case I say 75 per cent. are not taken up, or at any rate, not acted upon. That may be increased afterwards.

8386. (*Chairman.*) That 75 per cent. includes orders which were not for separation at all?—No.

8387. I think it does?—7,158 is the number put down in the table as being the orders of separation granted last year.

8388. Now, we know from your analysis that those are not orders in which separation is always the case?—That is so, but to what extent I have not accurate data to go upon.

8389. Apparently from your figures we might treat a very large proportion as being orders in which there is only maintenance?—I said probably 25 per cent., but that is only an estimate.

8390. That leaves 75 per cent. in which there are separation orders?—Yes.

8391. You mean that 75 per cent. of this figure is not taken up, which reduces the orders for separation, according to your estimate, to something like 1,700?—I think so, owing to reconciliation having apparently taken place.

8392. That makes it quite clear. The result is this, that these tables are misleading in bringing people to the conclusion that there are so many orders in which separation would permanently operate?—The table itself is misleading, and no allowance is made for the cases where reconciliation takes place.

8393. That would reduce very largely the number of orders in which you might expect the people to be

permanently separated?—Undoubtedly; that is the argument.

8394. That is what I wanted to get at very clearly and carefully. That is dealing, I take it, with the people who come before your court?—That is so.

8395. These poor people?—The wage-earning classes.

8396. Taking that as reduced in that general way, I think your approximations may help us very much. Do you consider amongst those that there will be still some cases in which, if they could get it, they would get a divorce?—Not in my experience; I have not had that personally. Of course, occasionally we get people in a better class of life, who may have been reduced in circumstances, who apply to us, but, taking the great number of cases that we have, I have no personal knowledge of any wish having been expressed to get a divorce. I have made inquiries, also, through the police-court missionary, and he tells me the same thing. I have also made inquiries through my principal court officer, who is brought in constant touch with both husband and wife, and he expresses the same opinion.

8397. What you said yesterday as to cases of great hardship applies to a stratum which is above the class who come to you, or some of them?—I think so, coming from the lower middle class, down to those immediately above the wage-earning class—small tradesmen, foremen, and people such as clerks.

8398. Those do not come to you?—No, only under very exceptional circumstances.

8399. Would the solicitor of the district be able to tell us about the position of those people? They do not come to consult you?—They come to me to consult me, because I am very much a poor man's lawyer there, but they do not come before me in my official capacity in court.

8400. Upon what is it that they come to consult you?—They come to me with their troubles, generally, every day.

8401. Is it that consultation which leads you to think that above this class which these statistics deal with, there is a stratum that is inflicted with the hardships which you have just mentioned?—Partly from that, and partly from what must be common knowledge, I think.

8402. Are those cases in which they have expressed to you their desire to get a divorce?—They have stated circumstances which would, I think, have justified them in applying for a divorce.

8403. I think now you have made it extremely clear, and helped us with your evidence, and I must thank you very much indeed. Now I think I may go back again to your proof. I do not know whether I have asked you about the principal causes of the differences between husband and wife in your experience?—No, I do not think so. I think we had stopped there. I think, in the first place, improvident marriages, the parties often marrying very young, and in some cases for the purpose of legitimatising the first born, and through the parties not having the means to keep up the establishment. They then are obliged to forego, especially the husband, the amusements they have been accustomed to, such as going to football matches, &c.

8404. We have had these views presented, but I am anxious to see, as no doubt everybody is, whether you have any remedy to suggest that deals with those causes?—That is, of course, a most difficult question. I do not see very well how you can throw obstacles in the way of people marrying. Of course, a good many of these marriages would take place in registry offices. I do not know whether something could be done to make the preliminary stages more public. It is the lesser of two evils. It is a difficult matter.

8405. Would you like to see them get a certificate from the relieving officer to say that they were entitled to be married?—I do not see to what extent that certificate could possibly go.

8406. You cannot help us by any recommendation upon that?—No.

8407. Your other cause is drinking, gambling, and subsequent neglect of work by the husband?—If you could eliminate the drink question you would eliminate probably 90 per cent. of the cases that I have.

8408. Passing on to an observation you make under that heading, you say this, "Of the 512 cases"?—Before you pass away from that I should like to say this. I have heard a good deal about frivolous applications by wives, but that is not my experience. I think in the very great majority of cases, I do not say that there are not exceptions, the utmost forbearance has been shown.

8409. You think the court is come to as a last resort?—Yes.

8410. Of the 512 cases in which, as already stated, payments have been made through the court during the last 8 years, in 16 cases a second separation order has been made, and in six of those the parties are now living together again?—Yes. A rather interesting point which strikes me there is this. I notice that last last year, I think it was, in six cases the wife alleged adultery on the part of the husband out of the cases that were heard. In five out of six they have gone back again, although she alleged adultery.

8411. During the year 1909, 1,473*l.* 12*s.* was paid through the court for maintenance. The average amount ordered for maintenance for the year 1909 here was 10*s.* 9*d.* per week?—The average wage being about 28*s.* to 30*s.*

8412. You have given us some statistics of the applications under the Summary Jurisdiction Act, 1895, and under the Bastardy Act, which show the number of orders for imprisonment?—I think I worked those out from the Criminal Statistics.

8413. We will have those printed in your evidence?—

AFFILIATIONS.

Statistics for England and Wales.—Summary Jurisdiction Act, 1895.

Year.	Applications.	Orders.	Enforced by Imprisonment.	Percentage of Orders to Applications.	Percentage of Imprisonment to Orders.
1905 -	11,443	7,681	2,073	67·12	26·98
1906 -	10,972	7,268	1,953	66·23	25·85
1907 -	11,164	7,543	1,977	67·58	26·20
Total -	33,579	22,492	6,003	200·93	80·03
Average	11,193	7,497·3	2,001	66·97	26·67

AFFILIATIONS.

Statistics for England and Wales.—Bastardy Act.

Year.	Applications.	Orders.	Enforced by Imprisonment.	Percentage of Orders to Applications.	Percentage of Imprisonment to Orders.
1905 -	8,498	6,693	1,699	78·76	25·36
1906 -	8,270	6,523	1,612	78·79	24·71
1907 -	8,190	6,507	1,496	79·44	22·99
Total -	24,958	19,723	4,807	236·99	73·06
Average	8,319·3	6,574·3	1,602·3	78·99	24·35

8414. I see you get an average percentage of orders to applications of 66·97 and an average percentage of imprisonment to orders of 26·67. That is an average of imprisonment after orders made?—Yes.

8415. What happens during those cases of imprisonment. What becomes of the wife. There is no money coming in. What becomes of the wife and children then?—She will do exactly what she did before. The

man is sent to prison because he has not been paying before, so that the wife is no worse off if he is in prison.

8416. That follows, but I want to know what happens in fact?—On the part of the wife?

8417. Yes?—She has to get along as best she can, and I think if it was not for the fear of imprisonment they would get paid worse than they are.

8418. The second point is, is that imprisonment a satisfactory remedy. During the time he is in prison he can earn nothing. It has been suggested to us that you might add hard labour to it, and then he would not be so anxious to stay there?—If anyone knows the inside of a prison, such as a clerk to the visiting justices does, you would find there is not much distinction between hard labour and ordinary labour. I do not think that the addition of hard labour will make much difference to the class of people who are sent to prison. It is mere child's play to that class.

8419. Would you leave this percentage of imprisonment to stand, or do you suggest that there should be any amendment of the law in order to avoid it?—No, let it stand. I should not relax the power of making the man pay.

8420. Do you think it desirable that orders might be made upon his employer to pay a portion of his wages?—In cases which are in arrear it might be an additional step, if the employers would consent to do so. They are exceedingly good in giving assistance in every way.

8421. Would the employers in your district be ready to acquiesce and act upon an order which required payment of part of the money to the wife and part to the other?—I cannot say, but judging from the great assistance they have given—they are always willing to give a note to say what a person is earning, either for this purpose, or for the purpose of poor law administration, or in prosecutions under the Cruelty to Children Act,—I should think they would.

8422. You think it might work?—I cannot tell, but I think as it would be compulsory they would do it.

8423. This percentage strikes one as being very large. Does it result from absolute inability to pay or from contumacious refusal to pay?—Contumacious refusal to pay in the majority of cases, undoubtedly.

8424. What happens to those cases? Does the imprisonment wipe out the arrears?—It wipes out the arrears.

8425. It wipes out the arrears when they come out?—Yes.

8426. What is the length of imprisonment?—That is according to scale.

8427. The longest time, I think, is only three months?—We should not send them for longer than three months.

8428. (*Mr. Brierley.*) There is no power to do so?—Three months is the maximum.

(*Mr. Brierley.*) When it is over 20*l.*

8429. (*Chairman.*) If they are contumacious, and go to prison for three months, they would clear off the arrears and be under no liability, except what has run on in the meantime?—If you send a man to prison for three months the arrears will be very high, therefore they would never be paid under any circumstances. It little matters whether they are legally wiped out or not. A working man could not afford to pay arrears to that extent under any circumstances. That arises through the wife allowing the arrears to accumulate, and not taking steps to obtain them.

8430. In those cases the wife has to get on as best she can?—Yes.

8431. Do you find that there are many cases in which she falls?—No, I do not think so.

8432. You have no remedy which you wish to bring before us?—None whatever.

8433. The other statistics are of a similar character for affiliation orders?—Yes.

8434. In which the percentage is not far from being the same?—It is very similar.

8435. Assuming that the present jurisdiction of the Summary Jurisdiction Act is retained, you want to suggest certain amendments in the law?—Yes.

8436. You propose that the summonses should specify more particularly the relief that is wanted?—I think so, and that they should contain particulars of the cruelty alleged also. I think that is fair to the husband, because he has no means of knowing what are the specific charges until he hears the evidence given in court.

8437. Generally speaking, the summons puts in all they could possibly get, and then they apply at the time for what they really want. You ask that the respondent should be summoned by stating specific occasions?—I think so. I think it is fair to the man.

8438. You suggest that where the husband make an application for an order for dismissal, or alleges that it should be discharged upon the ground of adultery, that he should be required to send particulars of such adultery?—Yes, to furnish particulars.

8439. Before he appears?—Yes, furnish particulars to the wife and to the court. At present we adjourn for that purpose. It is a very important matter to the wife.

8440. That would mean more expense. Would not an adjournment meet the case?—It does in effect.

8441. You state that there is a very general expression of opinion among justices' clerks that the wife should not be allowed to leave the husband as a condition of getting an order in a case of cruelty?—It is a great hardship in many instances.

8442. Then you say that a point, somewhat the converse of the last point, is the case of a married woman living in her own house, carrying on a business, and the husband is in such a condition that she might get an order if she left him. You mean in the same way?—Where cohabitation has ceased, I think that there should be some means of ejecting the husband from the house.

8443. Again, you do not want a month to elapse between the date of the order and the enforcing of it?—No, I think seven days is ample. It is a great hardship the wife having to wait so long.

8444. Then you suggest that there should be a wider discretion as to the custody of the children, and that such discretion should not be limited to misconduct on the part of the wife. You usually mean "by misconduct" not "to misconduct"?—Yes.

8445. That they should not be tied too tightly?—Yes, I think that there was too cast iron a rule laid down in Cobbe *v.* Cobbe.

8446. Then you think that in the case of an order being granted, that a husband should be under penalty to furnish his address and every change of address?—I think that would be useful.

8447. The next point is as to the aggravated assault, which I do not quite understand?—A conviction for an aggravated assault is a ground upon which you can found an application for a separation. An aggravated assault is defined as one that is of such an aggravated nature that it cannot in the opinion of the justices be sufficiently punished as a common assault under section 42, that is, by imprisonment with or without hard labour not exceeding two months, or a fine not exceeding 5*l.* The punishment for an aggravated assault is six months' imprisonment with or without hard labour, or fine not exceeding 20*l.*, and, in addition, if the justices so think fit, binding over to keep the peace for six months. The Statute does not create two distinct offences, but simply gives power to justices, if they think the assault is of an aggravated nature, to inflict adequate punishment. Then there are cases which I refer to, Crocker *v.* Raymond, Woods *v.* Woods, and Powell *v.* Powell, which establish that fact that you are not obliged to inflict the heavier punishment although you convict for an aggravated assault, and justices do not do that because the longer a man is in prison, or the greater the punishment, the more difficult it will be.

8448. What is the amendment you suggest?—Doubt has been thrown upon the accuracy of those decisions, and I only mention the matter in case it should strike the Commission, if there is some doubt, that it should be provided that the justices are not compelled to inflict the heavier punishment.

8449. We are not dealing here with punishment, we are dealing here with separation orders. What amendment do you suggest with regard to those?—None whatever.

8450. We are not considering that other point?—I did not know that.

8451. Then I think we may pass from that. I think you would suggest a compulsion to take a note of the evidence?—I have stated my reasons for that.

8452. You suggest there should be a statutory obligation?—There is no such obligation at present.

8453. The court has felt that difficulty, but it has always intimated it ought to be done?—What was a request has now become a command.

8454. I think also you suggest that where there has been an agreement to separate and non-payment, that fact should not debar the wife from coming for a separation order?—I think that is rather a hard case. I think the point was mentioned by a witness yesterday. An agreement in bastardy does not prevent proceedings being taken subsequently.

8455. You would put her back in the position she would have been in if she had taken out a summons?—Yes.

8456. Although there has been an agreement to pay, the money has not been paid. The next point is something about proof of adultery. Will you make that point plain?—That was a point also I heard mentioned yesterday. It was decided in Ruther *v.* Ruther that the husband is entitled to have the order discharged under section 7 on proof of the wife's adultery, although he may by his own neglect or misconduct have conduced to the adultery.

8457. You would give discretion?—I would give a discretion similar to that contained in section 6, which provides that where the adultery takes place before the application is made, and if the husband's conduct conduces to the adultery that is no bar to the wife. I should put the same proviso to section 7.

8458. What is the last point? You say where it is proved that arrears accrued due under an order, it should be enforceable up to the date of the discharge of the order?—Assuming adultery were subsequently proved, I think the arrears should be recoverable, as is done in fact, up to the time of the discharge of the order, and not to the date of the proof of the adultery.

8459. Those are all details of practice you have dealt with. I think we may pass from them?—There is just another point. I think the six months limit under the Summary Jurisdiction Act within which proceedings must be taken for cruelty and neglect, which are not continuing offences, might be abolished in these cases.

8460. There is one other general point you have not dealt with. Do you think it desirable that the magistrates should have power to make the order for separation only for a time, in their discretion, instead of it being permanent?—I do not see any objection to it, really. I think you did mention that.

8461. There is one other matter I did not mention, which has occurred to me in consequence of your evidence. Take these separation orders, which are in a sense permanent in the way you mention. Do you think it desirable that the husband might have a power to apply to discharge them if he can satisfy the magistrates that this permanent separation should not continue?—If he could satisfy the court that he had turned over a new leaf?

8462. Yes?—I would do anything to bring about a settlement.

8463. It has been suggested to me that the section which enables the magistrates upon fresh evidence to vary or discharge an order might be extended to cover cases where, although there was nothing exactly new except the husband's amendment, he might be able to apply to set aside an order?—I have never heard of such an application under the present state of the section, and I doubt whether it could be made. I do not think it could.

8464. But suppose power were given, where there is only separation, and possibly nothing wrong except wilfulness, would you think it desirable that the magistrate should have power, if the parties repented, to rescind the order?—If the husband, after the order was made, returned to the wife, and did not behave properly, then the old order should be revived.

8465. You would have some difficulties there?—It would be hard if he persuaded the bench to discharge the order and they went together again and he turned out as bad as before.

8466. It is suggested there are cases of improvement and reformation?—I would do anything to bring about a reconciliation.

8467. You see no objection to the magistrates having power to rescind the order in proper cases?—In proper cases, assuming that the original order might be revived.

8468. Proper cases and proper conditions?—Yes.

8469. (*The Archbishop of York.*) Power to suspend the order?—Something of that kind.

8470. (*Chairman.*) So that it should not have its permanency unable to be got rid of?—Yes.

8471. You have told us already you are a solicitor of 30 years standing. That is partly during your period of office?—Since I was appointed to Newcastle 23 years ago, I have had no private practice.

8472. What does the Incorporated Justices' Clerks' Society consist of?—I think there are 339 members.

8473. I think the secretary communicated with that body in order to get somebody delegated to give evidence?—Quite so.

8474. Have you communicated with all those members for whom you are giving evidence?—Yes. The secretary sent out a circular; perhaps I had better read the circular.

8475. You need not, so long as you are satisfied you are fairly representing their views?—I do.

8476. Of the 330 members?—339, I think.

8477. Are you here to express any view as to divorce questions and the facilities which might be afforded in that respect?—Not really on behalf of the members of the society, because I have not received any adequate replies upon the general question of divorce.

8478. That is so far as facilities being accorded is concerned. Have you replies on the question of facilities being given to local courts?—Yes.

8479. You start that point by saying, "There appears "to be a general concensus of opinion." That is what I want to come to. I am not on the question of amending the law. Will you tell us your view, which I understand is representative?—There appears to be a general concensus of opinion amongst clerks to the justices that reasonable facilities should be granted to the poorer classes to obtain that redress which, on account of the expense now necessary to be incurred, they are at present debarred from obtaining.

8480. That is for divorce?—Yes.

8481. Would you explain, after what you have already told us about these very poor people and the classes above them, which class it is you have in mind when you say it should be granted to the poorer classes?—As far as the wage-earning classes require it, as far as my court is concerned, I think we are perfectly competent to deal with those cases, even for divorce, ourselves, but, as I have already said, there seems to be no general expression or wish on the part of that class for a divorce, so far as my experience is concerned; therefore I do not think that the number would justify the magistrates having that power.

8482. Is this observation relating to the classes just above that?—Yes.

8483. You consider there should be reasonable facilities?—Yes.

8484. That is the general concensus of opinion?—Yes.

8485. What is the view taken as to how that should be carried out?—There does not seem to be any unanimity expressed by the justices' clerks generally as to whether it should be in the county court or whether it should be by the cheapening of proceedings in the High Court, but one of the reasons why I suggest courts of summary jurisdiction might have a certain jurisdiction in divorce as regards the wage-earning class is that there must be a considerable amount of expense, even in the county court or the High Court,

whichever you had, which would cut them out. As regards the higher class the county court seems the reasonable court, assuming its procedure is so amended as to give them the opportunity and the means to take advantage of it.

8486. That is on the ground of expense and the suitability of the court?—Yes; but there is a very strong general opinion amongst many justices' clerks and solicitors generally that the county court is not the best court, and they prefer the High Court, suggesting that the trial should take place at the assizes.

8487. Do you apprehend that those courts at the assizes might deal with these matters rather hurriedly, and not with that more quiet deliberation which ought to be given them?—Personally I should not like to assume a judge of the High Court would do that.

8488. However, local facilities are, in your opinion, desirable in this class of work?—I think so.

8489. I think you have some recommendations which have been made by the Incorporated Law Society of Newcastle, of which you are a member?—Their view was strongly that the county court was not the proper court to deal with it, and the suggestions that they made were that the procedure in the High Court should be simplified, and one of the suggestions was, the petitioner should have the power of beginning a divorce or matrimonial cause in the district registry of the High Court within the district of which either (*a*) the respondent resides, or (*b*) the petitioner and respondent resided together for the longest period during the six months immediately prior to ceasing cohabitation. Secondly, that in any cause so begun appearance should be entered, and the proceedings continue in the district registry, unless removed by order to the principal or another district registry on good cause shown. Thirdly, that any cause begun in the principal registry should be removable to any district registry by order on good cause shown. Fourthly, that the procedure in the district registry should be the same as in the principal registry of the Divorce Division, minutes being kept of the proceedings by the district registrar. Fifthly, that any divorce or matrimonial cause (whether proceeding in the principal registry or a district registry) should be triable at assizes, the place of trial being determined by order, as in the King's Bench Division.

8490. That is all machinery by which you would get the proceedings done locally, and the trial taken at the assizes, unless the order were made it should be tried in London?—That is so.

8491. The details of this are hardly worth pursuing at any length. Is the general view of your association and of the Law Society that local facilities in some form or another should be given?—Undoubtedly.

8492. The other point is as to general amendments. Have you some suggestions to make from the point of view of amending the law at present, first as to the publication of reports?—Yes. There is a difference of opinion amongst justices' clerks as to whether there should be absolute prohibition, or whether a discretionary power should be vested in the court to restrain the publication of such details as the court may think fit.

8493. Can you give any notion as to what extent there is that difference?—I should say it is pretty equally divided.

8494. One in favour of giving a discretion to the judge, and the other in favour of absolute prohibition?—Yes, except the names.

8495. What is your own view?—I have not any experience myself upon which I could base a view, but I should certainly give the court a discretion on the subject.

8496. What is the ground upon which you would do that?—Because I think that certain details which are published are not to the advantage of anybody.

8497. Do you think that would operate as a deterrent upon anybody against committing adultery, if it is published?—I do not think so; it is only immediate friends who know the circumstances and what is going on, and I do not think it would act as a deterrent.

8498. You recommend that a register of all decrees of divorce, both nisi and absolute, should be kept in the Central Office of the Royal Courts of Justice, which should be open to inspection?—That is so now. I am not familiar with the practice.

8499. People can always inspect the decrees, on payment of 1*s.*, I think. Then you recommend that the procedure and the court fees payable in the Divorce Division should be assimilated to the procedure and the court fees payable in the King's Bench Division?—That was a recommendation of the Newcastle Society, which I think was a good one.

8500. I do not appreciate what that amounts to?—The general impression is that the proceedings are simpler there than in the Divorce Court, the interlocutory proceedings.

8501. At any rate the point would be economy?—Yes, that is the point.

8502. Whichever way it is arrived at?—Yes.

8503. You think that there should be a discretion as to dispensing with security for the wife's costs when it is shown that she is possessed of sufficient separate estate? That is the rule now. Many of these things are not necessary. Then, I observe, you recommend something we have not heard before, that the High Court should be given the same jurisdiction as is given to courts of summary jurisdiction by section 5 of the Licensing Act, 1902, without any limit as to the amount of maintenance to be allowed?—That is on the ground of habitual drunkenness.

8504. It is only the poor person who can practically, with any benefit, utilise it?—Yes, partly; the High Court has no power.

8505. A person well-to-do, unless content to take under 2*l.* a week, can get no advantage from that Act?—That is the point; I think the High Court should have that power.

8506. The next recommendation is as to more serious amendments; it is that the wife should, in the discretion of the court, be entitled to divorce on the ground of adultery alone on the part of the husband. Will you express your view about that; is that a view which is generally held, or is it only your own opinion?—There are various opinions, speaking of justices' clerks, but the majority of opinions are in favour of the view I take, that the sexes should be placed on an equality.

8507. May we take that as the view of the majority?—I think so.

8508. Also that the period of desertion for two years should be reduced, say, to six months?—It seems to me if a man is determined to leave his wife, and the court comes to that conclusion, two years is a long time to wait.

8509. That is on the present footing, as one of the elements which has to be proved?—Yes. There was a difference of opinion. That is my own personal opinion.

8510. I do not know whether you express the view one way or the other as to any extension of the grounds to cover the desertion only?—Yes. I think if there is desertion for two years it should be a ground, in the discretion of the court, for divorce.

8511. You live very near Scotland?—Yes. Also on the ground of lunacy, I think.

8512. What is the next point you refer to?—Assuming cruelty has been proved in a court of summary jurisdiction, and eventually divorce proceedings are taken then I think that the finding of the magistrates should be conclusive on that point.

8513. I think that is all your proof deals with?—I think so.

8514. (*Mr. Brierley.*) I am not quarrelling with your conclusions, but with regard to that figure of 1,790 which you gave as the number of permanent separation orders in 1907, that is, I understand, founded on your experience at Newcastle, and at Newcastle only?—No, and different parts of the country.

8515. Does it work out as the right figure if you take the 51 per cent. which the justices' clerks of the various towns you mention in your proof have given you?—I took Newcastle at 75 per cent.

8516. Are you prepared to take the 51 per cent. as being the average number of reconciliations which take place after order made?—I think that is the very

lowest. I allow 25 per cent. for any errors in the police statistics.

8517. Does it not work out in this way; you have 7,158 orders for both separation and maintenance made in 1907?—For separation?

8518. For both separation and maintenance?—In the criminal statistics it is put down as separation orders.

8519. I understood you to say, of those 7,158 orders you thought 25 per cent. should be considered as maintenance orders only?—Yes.

8520. That would leave 5,368 separation orders as distinguished from maintenance orders?—Yes.

8521. If you take the 51 per cent. in which the justices' clerks of these various places say that reconciliation has taken place, that would leave 2,634 orders made in which no reconciliation had taken place?—Yes.

8522. Do you follow that? I am only suggesting that your 1,790, a very striking figure, is a little too low. On the returns from the justices' clerks it is more like 2,500?—It is quite possible; it must be a matter of surmise. At any rate it is a very appreciable number.

8523. I only just want to get it clear. You infer these reconciliations from the fact of payments ceasing to be made?—In my own case I go further than that. The orders, in many instances, have not been taken out, therefore they never commenced in my case. I cannot tell with regard to the other courts. I do not know how they have arrived at it. I have simply taken what they say.

8524. You mean the orders have never been applied for?—Never taken up—never gone out of my office.

8525. The payments are made to a court officer, but I presume your court officer does not visit the parties in any way?—No, they attend his office at the police court and pay every week, one to pay and the other to receive.

8526. If the husband does not make a payment, I suppose the officer knows nothing about the case except the mere fact he has not paid?—That is all, except seeing the husband and the wife. They both attend every week. He is able to see how they are behaving, and he hears a good deal of gossip.

8527. He does not really visit the parties?—No.

8528. It is a mattter of inference from the fact that they have not paid?—Yes.

8529. It seems a remarkably small number of cases in which you think immoral relations take place. Supposing a woman lives with another man, I suppose she would not appear and ask for her money in that case?—That would depend; she may or may not.

8530. Do you not think it is pretty well known among women of that class that if they misconduct themselves they have no longer any right to their payments?—Yes, but I remember one case in which it was brought to my knowledge that she was drawing the money, and it was pretty certain she was misbehaving herself, and I told the court officer to call the attention of the husband to it.

8531. I wanted to know what the procedure was. The wife comes for her money, and the husband also comes and pays?—Yes.

8532. When no payment is made you rather infer in that case that the parties have come together again?—But that does not cover my 75 per cent. That may be in addition to my 75 per cent. of last year.

8533. Yes, I follow that.

8534. (*Judge Tindal Atkinson.*) I do not know whether you are a registrar of any county court?—No.

8535. I suppose you have not had very much experience of the county courts?—Not for the last 23 years.

8536. Perhaps you cannot tell me how many district registries there are in the kingdom?—No.

8537. When you suggest proceedings should commence in the district registry you do not know the distances the people would have to travel to get there?—No.

(*Chairman.*) District registries of the High Court, you mean?

8538. (*Judge Tindal Atkinson.*) Yes. I have a district registry in my circuit, a very large circuit indeed, and in order for people to get to that registry they would have to travel a great many miles. Would not that be an objection to proceedings being commenced in a district registry?—The parties themselves would not go to the district registry. It would be the legal representatives.

8539. That involves that every poor person who wishes to take proceedings for divorce must go to a solicitor?—They must either go themselves or employ a solicitor.

8540. There may be many cases in which a person has not the means to employ a solicitor, whereas if they could go to the nearest county court registry they could take out their proceedings themselves?—I would like to call attention to this. In my county of Northumberland, probably the county court, where such proceedings would be taken, is 40 miles away from where a person may live.

8541. I think you are mistaken there. I do not think there is a single county court district in this kingdom which is more than 10 miles away from any place, and most of them not more than 5 or 6 miles from the county court. I know in my own circuit that is the distance from the nearest county court registry?—That depends upon what part of the country it is. May I ask where your circuit is?

8542. Essex, Hertfordshire, and Middlesex?—I can understand that.

8543. Perhaps there is another matter you have not gone into, the number of sittings of the different county court judges in a year. You have not followed that out?—No.

8544. You have not investigated that at all?—No.

8545. With reference to assizes or county courts being better, do you know the rule that the county court judge sits every month, and several days in many towns in one month?—Yes.

8546. You know, in regard to assizes, it may be six months between one assizes and the next?—Yes.

8547. When you say you have no doubt that a judge of the High Court trying cases at assizes would not hurry through a case, might it not happen that the business of the assizes was such that it would lead to an adjournment of the divorce cases?—It is quite possible.

8548. They would be adjourned for six months?—That is quite possible.

8549. Would it not be more advisable that the parties should get to the nearest county court, where there would be no adjournment at all?—I quite agree there.

8550. You say that the justices of the peace, with the assistance of their clerk, are perfectly competent to try divorce cases amongst these very poor classes?—I think so, judging from my own court.

8551. Therefore, I suppose, you would say, if the justices are competent with their clerk, that county court judges are perfectly competent?—Certainly.

8552. It is a mere question of machinery to enable them to have time?—Yes. I have not expressed a strong opinion one way or the other. As regards the present procedure of the county court judges, they seem to have their hands more than full, from what I understand.

8553. That applies to a limited number of courts, eight out of 55. As to imprisonment for separation orders, I should like to ask one or two questions. An order for imprisonment is made without any evidence of means being given. If the husband does not pay the sum he is ordered to pay, you do not inquire into his means, whether he has any means to pay?—I do as a fact, but I am not bound to do it.

8554. Do you ever adopt a system of making an order for imprisonment depending upon the amount being paid in instalments?—Certainly, very frequently, in nearly every case.

8555. Would it be any assistance if justices could transfer those orders for payment into the county court, in order that they should be enforced under the county court procedure?—Certainly not; it would be a most dilatory process. We have full power, and do it quickly.

8556. Have you power to issue execution?—Certainly.

8557. Against the goods?—Certainly, and I think the police court has a much more deterrent effect.

8558. I agree that is a complete answer. You say there is no complaint amongst these very poor people that they cannot get divorce. May that not arise from the knowledge they know they cannot get it?—I cannot tell; I do not think so. The very poorest, those in the lowest strata, have such very hazy ideas on the question of husband and wife morality that they do not even come to us for separation; they accommodate themselves.

8559. It arises from the fact that they do not care?—In the class above that class, those who come to us, I do not say that obtains to anything like the same degree, or at all.

8560. In that stratum of society you refer to they do not regard infidelity as an offence?—No, I do not include in that the class that come to us.

8561. Would you say a class whose weekly wages amount to 3*l.* or 4*l.* a week would be the class which you refer to, the stratum just above?—Yes; 3*l.* or 4*l.* as the maximum. Up to that the wage-earning class is the class I include in the category that we might deal with ourselves.

8562. (*Sir Lewis Dibdin.*) I think you have told us that your experience is that separation orders do not lead to immorality?—I do not think so.

8563. You have given us one reason for thinking that, that a very small proportion are discharged for the wife's immorality?—That is one reason. Another main reason is this—there are two other reasons—one is the eternal economic question again, when the husband has to contribute so much to the support of his wife and at the same time keep himself (I have told you what it costs in the Newcastle district, about 14*s.* a week, and the average wages are 28*s.*) he has not the money to spend in that way. Also I think this, in many of these cases the husband is really impressed by the good advice given to him by the court, and by the fact that he has found there is something in the wife's story. She has got the court to believe that she is in the right and that he has been a brute; I think he recognises that, and endeavours to pull up.

8564. Would you include amongst those who have given advice which is useful to the parties, the police court missionary?—Undoubtedly; we make use of his services in every possible way we can.

8565. He is a very good person in your court—I mean a very useful person?—Yes, as I believe in all courts; and I should not like to neglect referring to the police, whose services are equally placed at the disposal of the magistrates, and who also do all they can.

8566. If I understood you rightly, in another part of your evidence you said something which leads to the same result, that it was not your experience that women whose husbands had made default in payment under separation orders fell into immorality?—I do not think so.

8567. It all looks the same way?—Quite so.

8568. With all those conditions, you have also shown your reasons for your view that the total number of effective separation orders is, on the whole, very much smaller than the statistics lead us to suppose?—Yes.

8569. Further, that the number of effective separation orders is reduced again by the reconciliations that take place between the parties?—Yes.

8570. I suppose it would be entirely inaccurate to regard even the number of effective separation orders that are madeas being all cases of potential divorce, I mean cases where, if the law were enlarged, that is made cheaper and easier to enforce, there would be divorce. That would be entirely inaccurate?—Quite inaccurate.

8571. Just in passing I wanted to ask you about a matter of detail of separation orders. It has been pointed out to us that under the existing system an order for maintenance has to be enforced like an affiliation order, has it not?—Yes.

8572. That leads to this result if a man does not pay. First of all it is a month after the order has been granted, and subject to the necessary interval for desertion at the beginning, it may be five or six weeks, that the wife is in receipt of nothing from her husband?—It is longer than that.

8573. Would you regard that as a matter which calls for reformation, in the way of allowing the order to be enforced at an earlier date?—I do not know whether I have omitted to state that; that is one of my recommendations.

8574. I think your view is that the very poor, whom you have described to my friend, Judge Tindal Atkinson, do not want divorce. That is your experience?—That is my experience, at least. I rather divide them into three classes, those who come to us for separation orders and for relief under the Act. I have never heard any opinion expressed by them for a divorce, and that is also the opinion I have derived from the police court missionary and the court officer, but a class lower than those again do not come to us, and I say their views of immorality are of such a character that I do not think they would require any relief.

8575. Amongst the 200*l.* to 400*l.* a year people, what we call the lower middle classes, if we may, you think there there is a real demand for greater facilities?—I certainly do.

8576. The reason I want to get this clear is that in those cases they can afford to pay something for divorce?—Yes, and should.

8577. You are not in favour of making divorce very easy, I gather?—Certainly not. I would not do anything to make it so.

8578. In your view we must not confuse the absolute penury of the very poor with the position of those amongst whom, in fact, there is a claim for greater facilities?—Certainly not.

8579. I gather your view is that county courts, on the whole, are not a suitable forum for this purpose. I think that is your view?—Yes, although I have not expressed a very strong opinion between county court and High Court procedure.

8580. You think on the whole, having regard to the class of business the county courts are intended to deal with, that they would not be the best tribunal?—Yes, I do. It would have to be reconstituted in some way or other.

8581. You also doubt whether they would have time to cope with the work?—Apparently they have as much work as they can do now; but I was dealing with the suggestion that there should be a transfer of the work we have been accustomed to do, which would be absolutely impossible. I have shown that by the time it takes us. It would take the county court judge in Newcastle 56 days in a year to deal with my work alone.

8582. A suggestion has been made here that the county court judges could be given more time for this work if a considerable portion of their present work devolved on the registrars. Would you regard that as an improvement?—I should think probably a good deal of the work of the county court judge, as it is now, could be done equally well by the registrar, I think that goes almost without saying.

8583. A suggestion has been made here, which I daresay you heard of, by Mr. Justice Bargrave Deane, that the difficulty of there being no local tribunal for divorce should be got over by a judge of the High Court, of the Probate Division I mean, either one of the existing judges or an additional judge, going down to different centres and trying these cases. Have you considered that suggestion at all?—I think it is a good suggestion. He would be in a position to judge whether it was practicable. I have not had that experience. If it could be done, I think it is a very good suggestion.

8584. By way of comparing that suggestion with the assizes suggestion, is it not possible that Mr. Justice Bargrave Deane's suggestion has advantages over the idea of dealing with these things at assizes because of the hurry in the way things are dealt with at assizes?—From that point of view it undoubtedly would.

8585. That would not occur?—Undoubtedly.

8586. You would get a judge conversant with this very delicate class of work — delicate, I mean, in the sense of difficulty. Divorce practice is a difficult

kind of work?—Well, I should say the procedure may be; I do not see much myself in the actual practice. The facts are fairly concrete, and fairly simple, but the procedure may, as the result of its former history, ecclesiastical history, be somewhat intricate.

8587. Still, as it exists to-day, you would agree it is a jurisdiction which requires special care and experience?—The procedure evidently does. I should go in for simplified procedure as much as possible. One of my recommendations is to simplify procedure and assimilate it to the King's Bench as far as possible.

8588. Just one question about the grounds of divorce. I assume your view is that the marriage laws are a very important part of our social system, which ought not to be lightly tampered with? The whole tenor of your evidence is in that direction?—Undoubtedly it is.

8589. You are personally, I think, in favour of enlarging the area of divorce on the ground of desertion?—Yes.

8590. What does that mean, quite? Do you mean malicious desertion; desertion where one party has gone away without the knowledge of the other or the consent of the other party?—If that is what you mean by malicious desertion, undoubtedly.

8591. And where the desertion has continued a long time?—I have suggested two years.

8592. You think that would be long enough?—I think so. I would give the court a discretion, of course, but I think if the court is satisfied that either a man or a woman has left his or her spouse for a period of two years, it must be with the express intention or object of desertion and putting an end to the state of cohabitation.

8593. What is the principle in your mind at the bottom of that? There is no doubt he has an intention to put an end to the state of cohabitation, but you would not be in favour of a divorce because a man wishes a divorce simply? What is the principle upon which you would allow a divorce in that case?—When the party who has deserted the other has expressly put an end to the state of cohabitation to the prejudice of the other party.

8594. Would you allow divorce in all cases on that ground?—Short of any connivance.

8595. Supposing a man has gone abroad in search of work?—I would give the court a discretionary power. The court must come to the conclusion as to what was the object, the conclusion it has to arrive at in every case of desertion.

8596. Is there at the back of your mind this notion: a man does not leave his wife for a couple of years and desert her for nothing, the reason is that he has in fact set up another establishment elsewhere?—I think that is a very fair inference to draw.

8597. In your view, would it be possible to draw that inference so that in a divorce proceeding, although desertion would be the ground, it would be on the ground also that by reason of his desertion you could presume adultery?—You have to look at all the circumstances of the case. It is almost impossible to lay down any general axiom of that kind. You must direct your mind and attention to the particular circumstances proved before you. I could not lay down any general rule.

8598. The reason why I am pressing you about this, if I may ——?—I do not object in the slightest.

8599. —— is that I feel a difficulty, seeing the general trend of your evidence, as to how this agrees with your view that it is not for the general good of the State that divorce should be made easy at all, or that marriage ties should be lightly dissolved?—I think consideration should be shown to the other party. There are certain obligations a man owes to his wife or the wife owes to her husband, which are part and parcel of the married state, and if one or other of the parties brings that to an end designedly, without excuse, I think it is hard lines on the other that they should be compelled to remain in what is then a single state.

8600. That they should not be separated; but you cannot put them back in the position they would have been in if they had not married?—No, that is impossible.

8601. What about the children?—The same would apply in that case as in any other case in which a divorce is granted. You have to deal with the concrete question before you as regards children and all the other concomitants of married life.

8602. Are you looking at this from the point of view of the social necessities of the people?—Partly—not entirely.

8603. In your view, what is its relation to the religious teaching of the New Testament?—I have not considered that, and would not consider it.

8604. You ignore that?—I ignore it in the sense I am not taking it into consideration.

8605. I merely want to get your view?—I am not considering it from the religious point of view at all. I express no opinion whatever upon that.

8606. Do you regard that as a point of view which must be taken into consideration here, for instance?—No, I do not.

8607. You think it ought not to be?—I think it ought not; there is so much divergence upon that. You can take it clearly from me I do not take that into consideration at all.

8608. I want to put one question for the sake of clearness. You told us, amongst the reasons for improvident marriages, one very common one was that the parties marry for the purpose of legitimising the first-born. I think you said the children, but you meant the first-born, as it is in your note?—Yes.

8609. That means the woman is pregnant, and they marry before the birth of the child?—Yes.

8610. You did not mean to convey that by marriage previously-born children were legitimised?—No.

8611. I wanted to make that quite clear?—I did not mean that. I simply stated what was the fact.

8612. There is no doubt about that?—No.

8613. (*Lord Guthrie.*) What is the qualification for a clerk to the justices of the peace in England?—He must be a solicitor or a clerk to a solicitor of certain standing or a barrister of a certain standing.

8614. What is the maximum standing?——

8615. (*Mr. Brierley.*) Not clerk to a solicitor?—No. He must be a clerk in the magistrates' office for a certain number of years, or a solicitor, or a barrister of 14 years' standing.

8616. (*Chairman.*) As much as that?—Yes, it is so.

8617. (*Lord Guthrie.*) Does it come to this, that he need not be a qualified practitioner of the law at all?—Not necessarily qualified.

8618. And yet, in point of fact, so far as the law goes, and the inference of law from facts, he is the court?—He advises the court, and, although he may not be qualified, he may have very considerable experience.

8619. Are the clerks to the justices usually qualified practitioners?—Yes.

8620. What is the maximum salary, roughly, do you know?—That depends.

8621. Very roughly?—It may be a very small amount in the country districts. It depends whether you devote your whole time or not.

8622. That is what I mean. If he has to devote the whole of his time, what maximum salary do you put—500*l.*?—More than that, I should think.

8623. 500*l.* or 600*l.*?—Yes, 1,000*l.*

8624. That is quite enough. Do you grant separation orders without a maintenance order being included?——

8625. (*Sir Lewis Dibdin.*) The entry in your book agrees with what you have said?—Yes.

(*Chairman.*) Are you not forgetting, Lord Guthrie, that in the separation orders by a husband against a wife there is a difference?

8626. (*Lord Guthrie.*) I was asking the question generally. It is in reference to your statistics. Do you grant separation orders without a maintenance order being included, and, if so, in what cases?—The only case would be under the Habitual Drunkard Act.

8627. You told us 75 per cent. of the separation orders are not even taken up?—Yes, or not apparently acted upon.

8628. Does that not show many are granted which should not be granted?—Those are statistics in my court, and I say, unhesitatingly, no.

8629. How do you explain that extraordinary fact?—There is a very large proportion in all the courts, and I think one of the great reasons is the time. The orders are obtained by the wife against the husband. The wife has, in nearly every case, no money whatever. She has to leave her husband, and has been for some time without any means, living as best she can with her family. Then a month has to elapse between the time of the hearing and the order coming into effect, and she finds the pinch so great, she has nowhere to go, that she goes back to her husband at once without coming to take up the order, which, unless she had the fee remitted, she would have to pay for. Then, in addition to that, we take such great care over the cases, and read the husband such a lesson, if he deserves it, that it causes him to reflect, I think, and he makes overtures to the wife to resume cohabitation. I think it is rather a compliment to my bench than otherwise that the percentage is high.

8630. You propose to reduce the month that has to elapse?—Yes.

8631. Will the effect of that be that more orders will be taken out?—Yes, I think it will.

8632. To a considerable extent?—I cannot tell; that is problematical. I think it will. I think in some cases the wife is forced to take the husband back against her will.

8633. Do you think, as the effect of the decision recently pronounced, when it is better understood over the country, the number of separation orders will diminish?—I think they will.

8634. In regard to the suggestion which has been made of compelling employers to pay direct to the wives, would not that have the effect of debarring employers taking men against whom such an order had been pronounced?—I do not think so. What does it matter to an employer, so long as he is a skilled workman? I do not think the employer will care anything about his domestic relationship.

8635. The mere trouble to the employer may not be great?—The trouble may be. You mean from that point of view, the trouble it entails on the employer? I thought you were referring to knowing the man is of that character.

8636. No, it would not be the trouble, because it is a thing we all desire to see, if it can be done. It is a question whether it could be done. Would it entail particular trouble on the employer?—I do not think so, because the cases are comparatively few.

8637. If a man was skilled, it would not affect him?—No.

8638. In how many cases have you professional assistance, or do the people appear personally in almost all cases?—I think I can answer that question in detail. Where they appear personally, I do all the work for the wife and assist her as much as I possibly can, probably much better than if she were represented in many cases, I may say, incidentally. I find that last year 112 cases were heard, as I have already stated, in court. The wife was legally represented in 27 cases, the husband was represented in 23 cases; and both husband and wife were represented in 16.

8639. Suppose that local jurisdiction in divorce were given, whether by London judges at assizes or by a divorce judge going on circuit for that purpose, or whether the county court, or in any other way, do you think it would be very important that the people should be represented professionally in a question of such importance?—We are a little more free and easy in our courts.

8640. I am passing from that. I am assuming divorce jurisdiction?—I think so.

8641. If possible, by counsel as well as solicitor?—I do not think counsel ought to have exclusive audience in the county court over solicitors, and if the expense is to be increased by the employment of counsel it will make the expense prohibitive, even for the class I have specially mentioned.

8642. If divorce jurisdiction were conferred on county courts you would not limit the right of audience to counsel?—Certainly not.

8643. Would it not be important that a system should be devised, such as we have in Scotland in such proceedings, for having all parties who are included, without fee in the case of poor people, without any fee, represented by professional men?—It is not a matter I have considered, but I do not think you ought to make law too cheap.

8644. If it is a method that ensures a just result, especially in the way of excluding collusion, is it not a proper thing that should be done?—If you can satisfy me that is the case in Scotland, and that it is infinitely superior to the procedure in this country, I will agree with you.

8645. I am asking you the question?—Then I cannot answer.

8646. You do not think that all parties in such a matter as divorce should have professional assistance?—It depends on the case itself. There may be intricate matters arising or not; it may be quite a simple matter.[c] I think it depends on the particular circumstances of each case.

8647. Nobody proposes to exclude parties if they choose to come, but it does not strike you that there is the element of collusion which makes it desirable to have professional assistance?—On that ground I think professional assistance would be valuable; undoubtedly I do.

8648. You referred to desertion as a cause, and also lunacy as an additional cause. Does that exhaust the list?—And a long term of imprisonment, penal servitude.

8649. What about gross cruelty?—Yes, I think that is a cause.

8650. Does that exhaust the list?—Yes.

8651. Suppose you had desertion made a ground for divorce, would you expect that among the poor class that you refer to, you would have divorce applied for by deserted wives whose husbands have abandoned them and their children, and gone to the colonies, for instance?—I think, possibly, I should, in the cases that come before me.

8652. It has been put to you that you do not propose to make divorce easy; of course, nobody does. Would you insist in every case on a grave cause, making matrimonial life impossible, which you could prove before a competent court?—I do not follow you.

8653. Would you insist in every case in having evidence proved before a competent court of some cause which made matrimonial life impossible?—Certainly, evidence should be given to satisfy the court.

8654. You do not think in that case that would be making divorce easy?—No.

8655. Subject to that condition?—No, I do not think it would, subject to that.

8656. (*Mrs. Tennant.*) If the court were given power to attach the husband's wages, would you give it discretionary power to do so from the beginning, without waiting until arrears had accumulated?—No, I do not think so. I think I should trust the man in the first instance. I should not do anything to prejudice his position with his employer. All you want is the money, and unless you failed to get the money I should not adopt that plan.

8657. How long would you wait till the arrears had accumulated?—I am always in favour of the wife taking proceedings within a short time if the money is not paid, because if she allows a long time to elapse it is impossible to recover the arrears. I think I would say a month. In the case of a man in receipt of weekly wages, and this being an order for payment of maintenance weekly, I think a month would be reasonable.

8658. That might be rather long if the amount of the order were 10*s.* a week. A man in receipt of low wages would find it hard to pay an accumulation of 2*l.*?—I do not think you could do it earlier than that.

8659. (*The Archbishop of York.*) I want to ask you a question on the very interesting figures you gave us, so as to have it quite clear in my own mind. The

1,790 or 2,000 who are left would represent roughly some 800 or 1,000 marriages?—Yes.

8660. It would be quite an infinitesimal proportion of the total marriages in the country?—Quite so.

8661. Insignificant?—Quite insignificant.

8662. Even of these 1,700 or 2,000 separated persons there is no reason to doubt that many of them would be living perfectly chaste and respectable lives?—Quite so.

8663. What evidence there is, rather points to the fact that they do?—From the information I have, it does lead to that conclusion.

8664. Your experience of the class you are speaking of is, that in the case of the working classes it is wonderful how relations and friends will house and maintain and look after both separated wives and husbands?—Quite wonderful. They do a great deal for each other, and are most sympathetic.

8665. A great deal of the language we have heard about the serious state of things, of thousands of separated persons living together and bringing up illegitimate children, is largely rhetorical?—A myth.

8666. Such a statement as we have had, that there would have been granted approximately, up to the year 1910, 100,000 such orders, which are equivalent to divorce for every purpose of immorality, is practically grotesque?—Upon the information I have given that is so.

8667. With regard to the number of reconciliations which take place, you would agree—I think you have said so—that the capacity for reconciliation on the part of both wives and husbands is extraordinarily great and patient; they are always ready and very often willing to be reconciled?—It is wonderful how the wife takes the husband back after most horrible cases of cruelty.

8668. I think you put in, I do not know whether it was read, that in your court, out of 16 cases, where there had been two separation orders granted, six were living together again in spite of that?—Yes.

8669. Considering this capacity for reconciliation, your view would be it would be very dangerous to hinder this process of reconciliation by giving this class facilities for divorce which would prevent the possibility of any such reconciliation?—Yes, I agree with that statement to a point, not quite wholly.

8670. The point you would leave would be that it still leaves the case of the class you specially spoke of, the wage-earning class, untouched. Might I come to that class for a moment? You said there were many hard cases where some facility for divorce was required?—Pardon me, what I said was this, that the class who come to us are the wage-earning class, and I cannot find among them any indication of a general desire for divorce. In the class above that I think there is a hardship which should be met. Then the class below the particular portion of the wage-earning class that come before us, is a very low class, and has a very low standard of morality.

8671. I have some experience of that class, and am quite inclined to agree with you. With regard to the wage-earning class, I think you said in their case it would be not only possible, but desirable, for them to raise some substantial sum in order to procure a divorce?—By that class I mean the class above the artisan. I call the artisan a wage-earning class.

8672. Take the class where you think there are hard cases?—Above the wage-earning class.

8673. There, what with friends and relations, it ought to be possible?—It ought to be possible to raise the money.

8674. Would you say 10*l.* or 12*l.* would be excessive in that class?—No, certainly not.

8675. If the proceedings, even in the High Court, could be so cheapened, and the cost so reduced, and possibly there were opportunities given to persons with a limited income to receive assistance, then 10*l.* or 12*l.*, which might cover the cost remaining, would not be excessive for the class you are speaking of?—It would not be excessive, but I doubt whether it could be done for the money.

8676. Do you not think that the class you are speaking of, just above the ordinary working class, would desire, if it could be obtained by cheapening of the process, the advantage of the best court in the kingdom for their cases?—I do not think they would trouble very much about that, so long as it was a competent court.

8677. With regard to the effect of the extension of facilities for divorce on the class you are now speaking of, you would agree that on the whole, allowing for these hard cases, the standard of conjugal fidelity in that class is rather particularly high?—As high as any other, at all events; probably higher. They have less money to spend and less temptation.

8678. I should like to know your opinion as to the possibility of considerable extension of facilities of divorce, so that that class was familiar with its goings on, at county courts or assizes, as you please; what would be the effect on that standard of married life; would it not have a tendency to unsettle it?—I do not think so. I do not see why it should.

8679. You do not think it would operate in that way?—If it has that particularly high standard you ascribe to it, I do not think it ought to be shaken by greater facilities.

8680. Just a question upon what you have said as to trying matrimonial cases, that they were very largely questions of fact. Of course that would not be quite so true if these courts had jurisdiction in matrimonial causes where the extended grounds of divorce which you put before us were brought in?—They would still be questions of fact, and probably the procedure would be cheapened.

8681. I think you said in these cases, when you come to desertion, and so on, a very great deal depends upon the discretion of the judge?—Certainly, upon the facts proved before him.

8682. You still think they would be comparatively simple cases?—I think so.

8683. With regard to the list of extensions of which you are in favour, you said, in answer to Lord Guthrie, that you agreed with what he put before you, that no ground should be tolerated which did not make it impossible that the married life should be continued. That was the principle which you affected, I think?—What I meant to convey was that there are certain duties the one party has to perform towards the other. I was dealing then particularly with desertion, and if the desertion continued for a certain time, and the court came to the conclusion that that desertion was intentional and with the object of putting an end to cohabitation, it seems to me that would be a proper ground for putting an end to it by divorce.

8684. I think Lord Guthrie went further, and said would you not agree that no divorce should be granted under circumstances which made the continuance of the married life possible, and I think you said "Yes"?—It has been made impossible by the fact of having separated.

8685. That is in cases of desertion. Now I come to imprisonment. You said you agreed to the extension of the grounds to imprisonment?—Yes.

8686. But in the case of imprisonment, even for five, six, or seven years, it is possible, if the parties desire, that the married life should be resumed?—Yes.

8687. Therefore that is not a cause?—But one party would have to set the law in motion in order to obtain a divorce upon that ground, so, therefore, there would be an express intention to seek a divorce.

8688. You could not say in that case that that was a ground of divorce based upon the fact that the continuance of the married life was thereby rendered impossible, because it may be resumed?—It may be resumed; I would not go to that extent. I still maintain that there should be a divorce if the other party wished it, if there were a long term of imprisonment.

8689. (*Mr. Burt.*) I think most of my questions have been anticipated, but I should like to put one or two questions on one point upon which you have not been asked anything. You stated as a principal cause of difference between husband and wife, gambling and drinking?—Yes.

8690. In your experience do they usually go together, the gambling and the drinking?—Frequently.

8691. I suppose you have known cases, as I have, of sober steady men being addicted to gambling?—Yes.

8692. On the other hand, many ill-tempered men, using the term in the sense in which it is usually applied, do not gamble at all?—I agree they do not.

8693. Of course you cannot possibly have any statistical information as to which is the more prolific cause of difference, but I suppose you have experience? —Yes, drunkenness.

8694. Intemperance?—Undoubtedly.

8695. (*Sir George White.*) There was a question his Grace put to you which perhaps I did not understand rightly. You must pardon us if we ask you a good many questions upon these figures, because they have created a revolution in some of our minds with regard to them. His Grace said, taking the 1,790 cases left, that represented a little more than 800 marriages, but is that so? You take each case as representing a couple in married life?—Unless there have been re-marriages.

8696. The 1,790 cases cannot be halved to represent 800 marriages. 1,790 cases represent 1,790 marriages? —Undoubtedly.

(*The Archbishop of York.*) I wanted to get it clear, because I thought what you did, but Mr. Roberts said in his proof—these are the words, that probably 75 per cent. may be deducted from the total of 7,158 for the year 1907, thus leaving not more than some 1,790 separated spouses.

(*Witness.*) It should be separation orders.

8697. (*Sir George White.*) It is not 800 marriages? —I did not mean that.

8698. (*Chairman.*) There are two spouses in each case?—Quite.

8699. (*Sir George White.*) It has been assumed in some of the questions put that the other cases are reconciliation cases, but is that so, as a matter of fact? Are they not mostly driven together by force of circumstances rather than by reconciliation?—In my proof I put the word "reconciliation" in inverted commas. I do not mean reconciliation in the sense that they have come together as friends in all cases by their mutual consent, for in some cases I admit the husband has forced himself upon the wife.

8700. The wife has been compelled to go back to the husband?—The wife has been compelled to go back to the husband.

8701. Through force of circumstances?—Yes; I have stated that all through.

8702. I have not been present all the time. In regard to the percentage of cases in Newcastle, I see by referring back to your proof you have also taken care to test cases in what you call representative towns?— Yes.

8703. They show 51 per cent., against 75 per cent. in Newcastle?—I have taken those figures haphazard from the return.

8704. I want to ascertain from you whether you consider Newcastle, under those circumstances, a fair example to take as a test?—I do not know whether you were here, but the question was put to me as to whether I did not think we granted them too freely. I said I thought it was rather a compliment to the Newcastle bench, because I thought to some extent it was due to the very careful manner in which they heard the case, and the efforts they made to bring about a reconciliation, and the advice they gave to the parties, and I still think so.

8705. How do you account for the difference between Newcastle and the aggregate of these towns that are named here, because it doubles your figures. It would double the figures if this aggregate of towns is a correct test?—I am in a better position to judge, because we have the money paid through the court, so that I know whether the orders have been taken up or not. In my case that 75 per cent. means that those orders have not in a large proportion of cases been taken up, but that may not apply in the other cases to the same extent.

8706. Is that absolutely a fair inference, because the money is not being paid, that therefore the parties have gone back?—If the order has not been taken up it is a reasonable inference to draw that the parties have gone together, and from inquiries I have made from my court officer, that is the conclusion he has come to, that they are living together.

8707. Have not these other towns the same methods of ascertaining whether the orders are taken up or not? —They would know whether the order was taken up, but they would not know whether the money was being paid, because it is not paid through the court.

8708. You state in your proof, after giving the names of the towns, "I find that, roughly speaking, "some 34 per cent. of the cases are settled before "hearing, and in at least 51 per cent. of those heard "reconciliation takes place after order made." Is that a reliable statistic or not?—I rely upon the statement made to me. I have no means of verifying it myself.

8709. It is extremely difficult from these figures to gather whether the 51 per cent. is a fair average compared with your Newcastle 75 per cent., because it doubles the figures?—No.

8710. (*Chairman.*) I think perhaps Sir George White might be assisted if I refer to these sheets. We have had the sheets handed to us. I have them now, and I am going to ask a question upon them. This gentleman has made out some estimates from what other justices' clerks have sent to him as to what proportion of people have returned together, and so on, and perhaps I may call attention to them now as it is convenient. They seem to me—as I said before, you will kindly let us have this put in—to be rather estimates. There is no actual return of figures?—That is so.

8711. There is your case first. Liverpool puts down 30 per cent. as the proportion of cases in which the parties resume cohabitation before the hearing; after the orders have been made, 50 per cent. That is evidently mere estimate. Cockermouth, 6 out of 10 before hearing and 1 out of 3 after orders made. Dursley and Whitminster, 2 out of 5 after orders made. Warrington, "Cannot say." Mold says 14 before hearing and 5 after orders made. Berkeley, it does not say what that is. Bury, 5 per cent. before hearing and 50 per cent. after orders made. Hereford, "Have no knowledge." Grantham, "Have no knowledge." Dacorum, "Unable to say." Chichester, 25 per cent. before hearing; after orders made "Not known." Folkestone, nothing about before hearing, 1 out of 3 after hearing. This is no foundation possibly for an absolutely accurate statement?—It could not be.

(*Sir Lewis Dibdin.*) None of those cases are in Mr. Roberts' proof, and are not cases he has mentioned.

8712. (*Chairman.*) I thought Liverpool was?—Yes.

(*Chairman.*) What are the others?

(*Sir Lewis Dibdin.*) Cockermouth, Bury, Newcastle-upon-Tyne, Manchester, Matlock, Oldham, Sunderland, Bridgend, Birmingham, Kingston-on-Thames, Sheffield, Bristol, Boston, and Scarborough.

8713. (*Chairman.*) Have you the one which shows the figures you did give?—I took those from the different sheets.

8714. (*Sir George White.*) Did you take these promiscuously?—Yes.

8715. That is what I was trying to get at, whether this 51 per cent. had data as reliable as the 75 per cent. from Newcastle?——

(*Sir Lewis Dibdin.*) I do not think Mr. Roberts has taken them promiscuously, but promiscuously as representative places.

8716. (*Chairman.*) Let us get this a little clearer. I do not find any one of those cases in which the accurate figures are given except your own. Take Liverpool, for instance. The figures are not given. I do not find any of the other cities mentioned in this list?—They have given the percentage in some cases, and in others the actual figures.

8717. Are the other towns you mentioned in your evidence in chief contained in this list?—Not all in that; there are some more lists.

8718. Will you let us have all the lists. That is what Sir George wants?——

8719. (*Sir George White.*) I wanted to know whether the 51 per cent. was on as reliable data as the 75 per cent. We will presume it is not?—I should say it is not so much.

8720. (*Sir Lewis Dibdin.*) You said "roughly speaking"?—Yes, I said "roughly speaking."

(*Mr. Brierley.*) We shall have an opportunity of asking how the Liverpool figure is arrived at. I see by referring to the witnesses that we shall have a witness from Liverpool.

8721. (*Chairman.*) We shall be having a witness from Liverpool?—I can only take the average that is given to me, and draw my conclusions.

(*Chairman.*) Perhaps Sir George would be content with the sheets; we will have them put in. (App. VI., p. 46.)

(*Sir George White.*) Yes.

8722. (*Chairman.*) With regard to the 512 cases you have given as taking place in eight years at Newcastle, there are still 84 living apart. Have you discovered that from inquiry—I do not mean your personal inquiry?—Through the court officer.

8723. Your conclusion is that there is practically neither wish nor need for divorce in the lower class of cases that come before you in the form of applications for separation?—That is so.

8724. You state your experience is that non-payment does not lead to immorality on the part of women, that is to say, that they are not driven into immoral courses because they fail to get money from their husbands?—Not as a general rule, certainly not.

8725. You are still of opinion that facilities are needed? I understand rather you appear to divide the population into three classes, of which the middle class come to you. The very lowest class do not care enough about these things to trouble you, but the middle class come to you, and there is no need for divorce as far as they are concerned, but you think the better class artisans do need some increased facilities?—Yes.

8726. In regard to the court to which they would apply, it seems to me you put first in your estimation the court of summary jurisdiction as being able to deal with such cases?—With the cases we have before us, the wage-earning class.

8727. And grant divorce where sufficient cause is shown?—Yes.

8728. You are aware that that opinion has been greatly contested by witnesses here on account of what they consider to be the inability of the court of summary jurisdiction to deal efficiently with such cases?—So I have heard.

8729. That is not your experience?—It is not my personal experience.

8730. But, as a second resort, you would prefer the assize court, I understand?—I have not a very strong opinion.

8731. Would there not be a great deal of unnecessary delay in appealing to the assize courts?—If it is confined, as I think it practically will be, to the class I have mentioned, delay would not be of so great importance. It is only to the poor wage-earning class that the delay is of great importance.

8732. There is the infrequency of the sitting of the court, and three or four months delay?—I do not know that that is a very serious matter; I should say not.

8733. In regard to publication, do the Newcastle papers publish reports of local divorce cases that take place in London to any extent?—Not unduly. I think the Newcastle press is really very good.

8734. (*Mr. Spender.*) You would not say that it was necessarily a good thing, or conducive to morality, that these people should be forced, by purely economic circumstances, to live together if there were other good grounds for divorce?—I should say not.

8735. You think it would be fair to grant that, that there would be a certain proportion of your cases that might be reconciled under the stress of necessity, to whom it might be just and fair to grant divorces?—Yes, if they so desired it.

8736. Your figures tend to show the reconciliation, when it takes place, takes place quickly?—Yes.

8737. That is, before there is any need to take out the order?—In a large proportion of cases.

8738. That would be in a few weeks?—Yes.

8739. If you had a procedure for divorce which interposed a certain delay, that would meet the case of reconciliation; reconciliation would even then take place?—Probably it would.

8740. Broadly speaking, your view would be that the provision of facilities for divorce for people who have just cause is not likely to increase the number of divorce cases among respectable working people who do not want a divorce?—I think that is so.

8741. That is with reference to what the Archbishop said. May I ask you one question about your view as to publication. Is it the practice of the local press to report cases in the police courts on the separation orders?—No, occasionally, but not the ordinary case.

8742. Do you not think that the possibility of publication has some kind of a deterrent effect?—I do not think so.

8743. You do not think it would work among the working classes?—I do not think so.

8744. You would confine publication simply to these facts. Would you not think it necessary in certain cases to have a fuller publicity?—You may in certain cases.

8745. In fairness to the parties?—I can understand cases in which it might be necessary.

8746. You might include the judge's summing-up?—If necessary.

8747. (*Chairman.*) We can study these tables for ourselves when they are printed, but I think perhaps they are not quite so accurate as you think, if I may say so. In your proof you gave the towns from which you have got the 51 per cent. Take Liverpool; I see it has two estimates, 30 per cent. and 50 per cent., but the figures are not given?—No.

8748. Take Cockermouth the next: that has only 6 out of 10 and 1 out of 3 put down. Bury, 5 per cent. and 50 per cent.?—Yes.

8749. That evidently is a mere shot?—I have no means of telling.

8750. I thought from your proof you had the actual figures?—No, I said, "roughly speaking." I do not say more than that.

8751. We can take it these statistics also show that in the vast majority of cases the payments are made direct to the wife. I have only found, on turning over the first block, some two or three towns, of which your town is one—at least you mentioned that—in which the court has received the payments?—Yes, a great many are paid direct to the wife.

8752. The difficulty seems to come through not knowing exactly what has happened after, except in those solitary cases where the payment comes through the court?—You cannot tell so accurately. You can tell by their not coming to enforce the order. As I put it, and I intended to put it clearly in my evidence, I have exceptional opportunities, so that I can see.

8753. If we have these figures and statistics before us we can draw any inference we please. You have your own figures accurately?—Yes.

8754. (*Lord Guthrie.*) Suppose you had some procedure for granting a maintenance order at once, and limiting the separation order to a month, is it the fact that 75 per cent. of your separation orders would never be granted?—I do not follow you.

8755. Suppose you had some procedure enabling you, on the wife's application for a separation and maintenance, to grant a maintenance order at once, and a separation order limited to a month, would 75 per cent. of your separation orders not be granted?—It is impossible to say. I cannot answer that.

8756. Surely if 75 per cent. of your separation orders are not taken up, does it not follow that, suppose you granted these separation orders just for a month, limited to a month——?—Yes, I see; certainly it would.

8757. (*Chairman.*) I think I ought, on behalf of the Commissioners, to thank you very much for your evidence. It has been exceedingly interesting and very valuable?—I am much obliged to your Lordship.

Mr. WILLIAM BARRADALE called and examined.

8758. (*Chairman.*) I think you are clerk to the justices of the City of Birmingham?—I am.

8759. Have you been there 28 years?—Yes. Before then I was clerk at Dudley for 20 years; so that I have been sitting daily for about 50 years.

8760. You have had considerable experience, therefore, of separation orders and maintenance orders?—I have.

8761. Before I come to that, I had better deal with the matter in your proof a little; it will save trouble. Has your experience led you to consider whether any jurisdiction should be given in divorce cases to the county courts?—It appears to me that the county court is better than a criminal court for a trial of this kind, and it appears to me that the judges are trained and conduct enquiries of such an important character that it would be a very advisable court if a local court is deemed advisable. I cannot understand a better court.

8762. Have you with approval considered the question of conferring jurisdiction on the judges of assize?—I think the jurisdiction of judges of assize would be too costly, and the distance of time between one assize and another would prevent it being useful.

8763. There are three points: the expense of assizes, the distance people would have to come, and the interval between the assizes?—Yes.

8764. How many assizes for civil business have you at Birmingham?—It would involve a fearful cost on the litigants in other cases at the assizes.

8765. Why?—Because they would be kept waiting. The bar from London and the scientific witnesses would very likely be kept waiting while these trials were taking place.

8766. What is the number of assizes for civil work you have at Birmingham in the year?—Three.

8767. There is an interval of roughly four months in each case?—Yes.

8768. Do you think it would be advantageous or not if jurisdiction in divorce cases to meet the poorer classes were given to the county court at Birmingham?—I do.

8769. I am not going through the details of cost with you, because that we have had elsewhere. With regard to the separation orders, will you express your view and the reasons for it?—I should like to say I have not gone into the statistics, because I understood Mr. Roberts had prepared them. There are a few things which surprised me in my friend Mr. Roberts' evidence, and one was as to the number of orders which became useless because the parties were reconciled.

8770. We will come to that in a moment. I want to get the general point. What do you say generally as to the advisability of that system, or as to whether it has any objectionable features?—I think it must be continued in some form or other, and I cannot conceive a better court, or one, as they sit daily, which would be more convenient to poor people to attend than a court of summary jurisdiction.

8771. You say in your proof, "The effect of making "these orders, especially in the cases of young persons, "is, in my opinion, very objectionable for reasons "hereinafter stated; but as there are many cases "where such orders must be made, it is desirable to "reduce the number as far as possible without denying "the parties justice"?—I am of that opinion. I think that they produce a very great amount of misery on economic grounds. I sit daily. A woman comes and gets an order, and the husband becomes unwell or is short of work, and the first thing is she comes to ask that the order be enforced. What can we do? We can send him to gaol; you will see the number we do send to gaol.

8772. I am coming to those points. You think it is necessary to keep up the system in certain cases, but you find it objectionable for some reasons?—Yes. I think that it is absolutely necessary to keep up the system, but I think the orders are granted far too freely, and cause a very great amount of harm.

8773. We will go on to your figures for 1907. In that year 201 summonses were issued in Birmingham for the purpose of obtaining these orders. Of those, 164 orders were made and 37 refused. Therefore, your magistrates were exercising careful consideration as to whether they should be granted or refused?—Yes. They were heard at length and very carefully.

8774. I thought you said just now they were too easily made?—I think they are.

8775. In the face of that?—Even then.

8776. The number of orders varied was 4, chiefly by reducing the weekly amounts ordered, and the number of orders discharged by reason of adultery was 6?—That is so.

8777. That is for the year 1907?—Yes.

8778. Have you the figures for last year?—Yes, for 1909.

8779. How many cases were discharged for adultery last year?—Four.

8780. How many in 1908?—Four.

8781. As your figures here are for 1907 we will go back. There were 120 summonses or warrants issued to recover arrears under the orders. Of these, 31 were committed to prison?—Yes.

8782. How many paid after commitment?—The others paid, except those that were committed.

8783. In the year 1908, 225 summonses were issued to obtain orders. Of these, 179 orders were made and 46 refused?—Yes.

8784. Seven were varied and 4 were discharged for adultery, 159 summonses or warrants were issued to recover arrears, and 48 were committed to prison in default of payment of the sum due with the costs; 4 paid after committal to prison. In 1909, 195 summonses were issued to obtain orders. Of these, 144 orders were made and 51 refused; 8 were varied and 4 were discharged for adultery; 150 summonses or warrants were issued to recover arrears and 54 were committed to prison in default; 2 paid after committal to prison. That is right, is it?—Yes.

8785. I do not notice any distinction in those returns between orders for maintenance as distinguished from orders for separation?—You may take it that they include both.

8786. Can you give any proportion as to the two?—No; we have a very small proportion; they are nearly all for desertion. They do not grant separation orders unless there is something in the man's life from which protection ought to be secured for the wife.

8787. Can you tell us out of the number of orders made in 1909—you say 144 orders were made—how many approximately of those would be orders in which there was separation?—Very few; I should not think there would be more than 10 per cent.

8788. They are mostly mere maintenance orders?—Maintenance orders.

8789. Since when has that practice been adopted?—Since Harriman *v.* Harriman, really, or Dodd *v.* Dodd.

8790. That is since attention was called to the power of making them?—Yes.

8791. I want an explanation of this. You say in your proof you have made no distinction between separation orders and maintenance orders, as the result is the same?—By that I mean this: If the applicant gets an order it means that the homes are divided, and the effect is the same in the one case as in the other. If you grant a maintenance order it really results in a separation, cohabitation ceases, the home is destroyed, and two homes are kept up.

8792. To what extent do you find, where orders have been made, that the parties resume life together?—I was rather surprised to hear Mr. Roberts' figures about that. I could not possibly get reliable information except by sending and inquiring in each case. Take the number of orders not taken up. That may arise from a great many circumstances besides being reconciled. First of all, after obtaining the order, sometimes the man absconds, and at another time the girl, perhaps, has to go into service, if she is a young wife, and goes away, and she does not think it is worth the expense and trouble. Then, again, I suppose a number of them would not be taken up on account of the poverty of the applicant. In Birmingham that

would not arise, because the magistrates would remit the fees at once rather than allow any injustice to be done, and in the case of enforcing the orders, the magistrates always grant free process, summonses free, and if the man is in the North of England and the magistrates recommend fetching him back to Birmingham, the expense, which is often considerable, may be paid. The Watch Committee empower it to be paid.

8793. I gather from what you say you cannot draw a reliable conclusion from the fact that orders are not taken up that the parties in those cases have come together again?—Certainly not, without an enquiry into each case.

8794. Is Birmingham one of the towns who supplied figures to Mr. Roberts?—Yes, but not supplied by me. They were supplied by my colleague, and I have not really compared them.

8795. Let us see what he has for Birmingham. As to those not taken up, "Cannot say." As to those where the parties resumed cohabitation after orders, at least 15 per cent. is put down. Where does that come from?—My colleague.

8796. Where does he get his "at least 15 per cent." from?—It is simply an estimate.

8797. Would you agree with it?—I think I should, in the main.

8798. What helps you to arrive at it?—The clerks were instructed to get a return of all the summonses issued, and all the cases heard. I was away at the time, and I have no doubt my colleague built up his estimate on those figures.

8799. Those figures would not give the numbers of persons who had returned to cohabitation after the order was made?—No, it is impossible.

8800. I want to know where the 15 per cent. that was put down can have been obtained?—It is simply guess work.

8801. Would you agree with it as being a right guess, or do you think it is one you cannot rely upon?—I should think it is fairly reliable.

8802. What grounds do you go upon in saying that, that is to say, 15 per cent. have come together after the orders have been made?—I believe an inquiry was made from the police officers who serve the summonses in all these cases, and that is where he got his information from for the purpose of this estimate.

8803. That would be 15 per cent. on the total orders made?—Yes.

8804. You have some observations to make upon the question of desertion. The large majority of the orders that are applied for are on that ground, I understand?—Yes.

8805. But many are refused on the ground that legal desertion is not proved?—That is so.

8806. Or that there has been an agreement perhaps for mutual separation which they cannot enforce?—Yes.

8807. Would you be in favour of allowing them to have a summons for desertion if the instalments under such agreements were not paid?—I think it would be very much better to have a new order made by the same court, and make that the basis of granting the order. The procedure would be more uniform.

8808. The next point is, you think the wife should have a remedy for the neglect to provide proper maintenance, even though she has not left the house?—Yes.

8809. I think everybody is agreed about that. If she does so she may have to go to the workhouse, or there are many other difficulties?—Yes. I should like to explain my view about that, if I may. A very great number of persons apply for summonses where they are not granted. They sometimes come in a temper; if the magistrates adjourn the case to the next day we do not see any more of them. A great many come with deeds of separation made out by different solicitors, and on inquiry we find that the solicitors have advised there was no legal desertion, and therefore they have made it without separation, at much greater cost, and the only way it can be enforced is to go to the county court. Perhaps they have to wait a month before the case is heard, and meantime the woman is practically starving.

8810. You would allow her in those cases to apply to the magistrates?—All this can be much simplified in this way, that all wives should have the power of applying to the magistrates direct for a summons on the ground that the husband has neglected to maintain her, and the justices should have the same power as they have now under the Vagrant Act in very bad cases, of conviction or, alternatively, an order, whichever they may think fit. I cannot see the justice of placing a woman in this position. If she is unable to get a summons under the Summary Jurisdiction (Married Women's) Act, why should she be forced to go to the workhouse? The offence of the man is that he neglects to maintain her. If she goes to the guardians he is punishable by imprisonment with hard labour; there is no question of payment at all.

8811. You think that the justices should have power to make an order on the husband who deserts or neglects to maintain, without forcing her to apply for relief or to leave the home?—That is so. I fail to see why, where chargeability fails, it aggravates the offence on the part of the husband.

8812. The next point is, in cases of failure, to keep up the payment, they send people to prison. Have you any remedy to suggest with regard to that?—No. That is the last resort. I heard the evidence of some of the witnesses yesterday. We find no difficulty about the payments to the wife. When the order is made the defendant is told that the order requires him to pay to her, and therefore it is his duty to forward the weekly sums to her. In nearly all cases he does that, and the husband as a rule sends, or very frequently sends, postal orders for the amount, and keeps the counterfoils as his receipt for the payment, but there is no collection by the wife.

8813. He can always send it?—He is bound to send it, or the magistrates will grant the process for the arrears on the ground that he has not sent it.

8814. I was on the point of sending them to prison. Do you think there is any alternative that can be suggested for that?—I do not.

8815. You say when orders are now obtained the home is usually broken up and separate homes have to be established. These cannot be properly maintained by working men earning from 20s. to 30s. a week. Does that often compel the parties to resume life together?—When the husband is sent to prison it is quite clear the woman, in the majority of cases, applies for relief; she has nothing else to do. She cannot look to anyone else to support her; her husband is in prison. That wipes off the arrears under the warrant, and if he is in prison for a month he then comes out owing four weeks, and she will want to enforce that, which would mean the man is constantly put in prison.

8816. There is no remedy you suggest about that?—No. I think the orders would be useless practically unless there was power to imprison as a last resort.

8817. You observe when proceedings to recover arrears are heard it is quite common for the wife to say, "He can afford to keep another woman." Is that a frequent thing?—My opinion is that the separation orders have led to immorality on the part of the man particularly, and to a small extent on the part of the woman.

8818. You say that is your opinion; is that founded on actual observation?—Yes, it is. In scores of cases where the parties are before the court and she alleges that he owes her for so many weeks, he will say, "I "have been out of work and have not the money," and she says at once, "He is keeping another woman," and in a number of cases he admits it. In other cases he will perhaps deny it, and we do not know whether it is true or untrue, but at all events that statement is made so frequently that there must be some truth in it, especially when it is not denied by the defendant.

8819. That leads you to conclude that where the order is in fact existing and in force it leads to cohabitation with someone else?—It does.

8820. Have you cases in which application is made to discharge the order on the ground of the wife's

adultery? I think you have given the figures as to that?—Yes.

8821. Is that although the husband may himself be leading a guilty life, having neglected to pay sums of maintenance?—Yes. I think it is a great hardship. The man may be living in adultery with another woman and may neglect to have paid her. She is driven by poverty to make one lapse, and then he asks the magistrates to discharge the order, and they are bound to discharge it.

8822. They have no discretion?—No. I do not think it ought to be discharged except upon terms.

8823. You would leave a discretion on the part of the magistrates?—Yes.

8824. Your next point is where separation or desertion continues for a time you think, if the husband is cohabiting with another woman, that the wife should be entitled to a divorce?—Yes, if he is living constantly with another woman. I agree with the other witnesses that where orders are made they should be enforced at once; that would make a week in arrear.

8825. With regard to persistent cruelty, in consequence of which the justices have power to make an order, you suggest that there ought to be a conviction for assault in the first instance or an order for sureties where the persistent cruelty alleged is that of beating? What is the point you wish to emphasise?—I find in nearly all the cases I have heard lately, at all events in the last year or two, that perhaps the last assault is a mere slap in the face, but then they revive all the other little things during the whole of their married life, although she has never complained or taken any proceedings. I think before such a drastic step as separation under those circumstances should take place she should try and enforce the ordinary law for assault or for sureties. In a great many cases we now bind the man over, and I have scarcely ever known a case where the man has failed to observe the condition of his recognisance.

8826. That would enable the magistrates not to make an order where they thought fit, but to bind them over?—Yes. I am speaking now entirely of cases of beating, not other acts that are deemed cruelty. Where the woman only complains of beating I think the first process should be to have him brought up for assault or for sureties.

8827. Your next observation is on cases of aggravated assault. That is only a statement, I think?—We have very few separation orders on that ground.

8828. And the power to make separation should remain there?—Yes.

8829. That means a case of safety?—Yes.

8830. As to habitual drunkenness, you rather hint that the definition is too narrow?—I think so. The proof of habitual drunkenness is that she is so drunken as either to be dangerous or unable to manage her affairs. A great many of the cases we have are periodical outbursts with lapses at times, when she is sober.

8831. You would rather extend the definition to such cases?—I hardly know how to get over the difficulty. We get over it in Birmingham by sending them to an inebriates home. We have a number of beds at a place called Brentry, and if such a case arose and the magistrates believed the woman was an habitual drunkard they would say it was very much better to send her to Brentry than to separate the family.

8832. That has the effect of temporarily separating without the necessity for making any order?—It has a curative effect on the woman or the man if a drunkard.

8833. As to the publication of reports, what have you to say?—I am of the opinion of nearly all the witnesses who have given evidence; certainly if there is anything objectionable it ought not to be permitted to be published, but I think the better plan would be to throw the responsibility on the publisher. I would like to point out one strong objection to these separation orders is as to the children. The case may be that the husband and wife lead a disagreeable life, but both are kind to the children. It is useless making the father the guardian of the children, because he has no home or no person to take charge of them and see they go to school, and if you leave it to the wife the children are entirely deprived of the guardianship of their father.

8834. What is your remedy?—My remedy is to make as few orders as possible, and that is the only one I can suggest. It is quite clear you deprive the children of a parent in all these cases by making an order.

8835. You have dealt with the last point in your proof about giving jurisdiction locally in order to afford facilities to the people who cannot at present afford the expense. Do you think that remedy would be largely used among the class of people who come before the magistrates?—What remedy do you mean?

8836. Applying for a divorce?—I do not know.

8837. We have heard that in a class a little above them it might be much more used than possibly even by them?—Yes, I think it might.

8838. Your general view is that there should be some local tribunal?—Yes, and I cannot suggest anything better than the county court for the reasons I have stated.

8839. I think that is all I find in your proof.

8840. (*The Archbishop of York.*) You were speaking about separation and the effect of separation orders on the morality of people, and you mentioned in evidence that there were a number of instances in which, when a woman tried to enforce the order against the man, the man alleged his inability to pay, and she retorted that he was able to keep another woman. I gather that the number of instances in which that could be proved or was admitted was not very large?—I should think quite half are not denied by the husband, but others perhaps may be, or may not be proved, or he says nothing; but I judge from that that it does lead to the man taking up with another woman.

8841. You know there is nothing so frequently alleged in these circumstances by a woman as that her husband is doing that?—If it rested there I should say it was too doubtful, but when he is challenged with it before the magistrates in a court and either admits it or does not deny it, there is some evidence that he is.

8842. Is not that mainly in the class of which we have heard so much, where in any case conjugal fidelity is rather loose?—Of course it is in the lower orders. I should like to say what is my view as to the stoppage of the payments by the employers. I do not think for a moment that the employers in Birmingham would do that, and I think it would prejudice the man in this way. It would give a lot of trouble to keep the accounts, because you must keep an account to show the money he received and what you do with it. I think it would prejudice the man. The employers would say they would rather not have a man who has a separation order against him to work for them, and would give a preference to other workmen where no such order existed. I think it would add considerably to the difficulty rather than help it. I do not think, first of all, that the employers would, and I think if they did the employers would say, "We cannot be at "all this trouble; we will get another man."

8843. (*Sir George White.*) Do you have the maintenance order payments made through any official of the police court, or direct to the wife?—It is paid direct, and when in work paid direct regularly to the woman.

8844. Do you think it would have any beneficial effect if hard labour was added to it in the case of failure to pay?—I should be in favour of giving the magistrates the discretion of imposing it. There are cases in which I think hard labour would have a beneficial effect, but I do not think it would have much effect upon the people summoned.

8845. You say probably the act for which a woman summons her husband when a charge of cruelty is made is a slap in the face, but they revive other acts during the whole of their married life?—Yes.

8846. Do you admit that as evidence in such a case?—You must; an isolated assault of that kind would not be sufficient.

8847. Do you not limit the time during which the wife can go back?—As a rule I tell her, if it is the wife, that she must supply the husband with a list of

the occasions and dates, so that he may be prepared to meet it.

8848. You do not put a limit such as six months?—No; I do not think we are legally entitled to.

8849. You say you very often treat cases of habitual drunkenness by sending them to an inebriates' home. Do you find that effective? Have you any evidence as to the results?—*The visitors say it is effective, but I know that after their discharge we frequently have them again. I cannot tell you in what proportion.*

(Chairman.) We thank you very much for your evidence.

Mr. EDGAR CHRISTIAN SANDERS called and examined.

8850. (*Chairman.*) You are a solicitor and clerk to the justices for the city of Liverpool?—I am.

8851. You have held that office for 7½ years?—Yes.

8852. The population of the area in Liverpool subject to the jurisdiction of the justices is 760,000?—Yes.

8853. I understand that the stipendiary magistrate of Liverpool suggests that you would be able to give all the details in evidence which it was desirable to have with regard to the magistrates' work there?—That is so. The stipendiary in Liverpool does not take this class of case, they are taken by the magistrates.

8854. That is why I thought I had better put the question to you?—I may say as a matter of interest that he has seen my proof and authorises me to tell the Commission if desirable that he agrees entirely with it.

8855. I am afraid I cannot take it as read, I should like to do so. The applications under the Summary Jurisdiction Act of 1895, and the Licensing Act 1902, you say are heard by the lay magistrates, and a special court sits one day each week on which those cases and no others are taken, and there is a special rota of magistrates arranged for that purpose. A shorthand note is taken by a competent clerk as well as an abbreviated note by yourself?—Yes.

8856. The number of applications for summonses in 1909 was 755, of which 388 actually came to trial. Out of this number, 303 orders (or 78 per cent.) were made, and in 85 cases no orders were made?—Before I leave that point may I explain the figure 755. My proof says "the number of applications for summonses "in 1909 was 755," but that is where the summons was actually issued. As a matter of fact there are more applications than that, because we are very often able to effect a compromise at that very early stage. When an application is made we hear it at length sometimes, and very often ask the police court missionary to call and make enquiries, and very often he says that he has effected a reconciliation.

8857. Do you mean that 755 was the number on which summonses were granted?—Yes.

8858. Then how is it that only 388 came to trial?—I will explain that in a moment. It comes later on.

8859. I will follow your proof if you have it later on. First of all I will deal with the local courts. The jurisdiction referred to, of course, is divorce. Is the opinion which you and others who have looked into this matter in Liverpool have formed, that the cost of obtaining a divorce even in undefended cases renders it impossible for a large section of the community to obtain them?—Yes.

8860. You say that is wrong in principle and you proceed to consider whether there is an actual necessity for the extension of local courts and what would be the effect of it?—Yes.

8861. You suggest that it is almost impossible to draw any reliable deductions from the existing state of affairs, as nearly all the present applicants for divorce are persons of the higher social standing, I take it, than those who come before the magistrates?—That is so.

8862. So that with them there is not much experience under the jurisdiction of the magistrates?—No. The broad principle I think is this: in most of our cases if you granted divorce it would make the wife come on to the poor rates.

8863. So that the economic question comes in there. They are forced to resume cohabitation in certain cases or rely upon getting a maintenance order?—Yes.

8864. Have you found as a matter of experience that any proportion of wives who come to the court might desire divorce if they could get it?—I have no certain information about that, but I can give my experience, and that is, that it would only apply to a small number, I should say certainly not more than 10 per cent.

8865. Does that experience mean you have had suggestions made that they would like to get a divorce if they could, or are you surmising it from something else?—I am surmising from the grounds that are present, namely, the adultery coupled with the other facts.

8866. Adultery being in the cases that are brought before the magistrate with other facts?—Yes.

8867. You think in those cases that they would proceed for a divorce if they could?—I think in many they would, but I do not think that it would be more than 10 per cent. of the total number of applications.

8868. You do not put that forward as based on reliable data, but rather as a surmise?—Yes. We have no certain information with regard to the man's adultery; we have, I take it, with regard to the wife's adultery because the husband will always allege it, if it is present, as it is a defence to an action for separation against him.

8869. Or he will allege it as a ground for rescinding the order?—Yes.

8870. How many orders were rescinded last year?—I have all the particulars later on.

8871. You summarise it rather in this way: "What "the wives really want, in my opinion, is to have a "living maintenance made to them by their husbands, "and to be free from their brutality, cruelty, and "neglect." You are led to that by your conversation with the various officers you come across, such as relieving officers, police-court missionaries, sanitary inspectors and visitors for charitable societies?—Yes.

8872. From your experience would you be led to the conclusion that the husband should have some power of summoning his wife apart from the Act dealing with habitual drunkards. He has none at present?—He has none, but he has a practical remedy in his own hands, namely, deserting his wife.

8873. And letting her summon him?—Yes.

8874. And agreeing to pay so much?—Yes. That I take it was the object of the Act originally in not giving the husband a power because he possessed that remedy already.

8875. That is an indirect way of getting the same result?—I think that must have been the object, otherwise one cannot imagine why the Legislature should have left it like that.

8876. You say that there were nine applications in Liverpool last year by husbands to rescind orders on the ground of adultery, and five cases in which the orders were discharged, in one case the application was dismissed and in the remaining three cases the applications were withdrawn. Those are the figures you are coming to?—Yes.

8877. You also say that in desertion cases under the Vagrancy Act in surprisingly few cases is adultery alleged as a ground of defence?—Yes.

8878. You say, "Hence one is entitled to assume "that the cases in which the husband complains of "his wife's adultery are not so numerous as one might "believe from statements which have been made upon "the subject"?—I believe they have been grossly exaggerated by people who have really no grounds upon which to form a correct opinion.

8879. To what extent are you able to judge the converse point, as to how the husband might be found to be living in adultery. With regard to the wife you have cases brought and charges made in order to get the order dismissed. Have you enough experience, or is it brought sufficiently before you, so as to be able to

say to what extent you think that the husbands are found guilty of adultery afterwards?—If I gave you a figure it would be only guess work.

8880. Leave out the figure, have you any ground for thinking that is the case?—It is undoubtedly larger than the number of wives in the natural order of things, but I cannot state any proportion.

8881. The extent of it would be guess work?—Pure guess work.

8882. Do you think that is produced by the fact of the order existing?—That is bound to have some effect clearly, but I cannot say what effect.

8883. Taking these points of view to be correct, you think "that to put divorce within the reach of the "poorer classes is to a large extent unnecessary, and "if by any change in the law, or cheapening of the "procedure, the number of divorces should be largely "increased, as it inevitably would be, I believe it "would have a very serious effect on public morality"?—I think so.

8884. Are you speaking there of people who come before the magistrates, or are you speaking generally?—I am speaking generally. I think the more easy you make any remedy you enlarge very greatly the number of people who wish to take advantage of that remedy.

8885. Does it not necessarily follow that the circumstances in which they are without that remedy, are worse than if they had the remedy. That is what I want to get at. If you give greater opportunity it does not increase immorality necessarily. Is your ground because it would give greater opportunities?—Yes, chiefly.

8886. It does not seem to me to follow from that that immorality would exist whether opportunities of release were allowed or not?—I feel that cheapening divorce would have a serious effect upon the community at large for this reason, a great many more people would naturally take advantage of it and the knowledge that they could do so would gradually permeate among all classes, having a deleterious effect on the country as a whole.

8887. What effect has it when they cannot get a divorce? That is the other side of it. Have you thought of that?—It is difficult to state it in a principle, as it were, because you have so many facts to consider. You have the single men, and so on.

8888. I agree with you that it is very difficult?—It is almost impossible to state in a few words what effect it would have.

8889. With regard to the people who have orders made, are you able to give us a notion as to how many come together again? We have had the figures of Liverpool in this table that Mr. Roberts put in, but they are only estimates. Can you give anything which would show with reasonable accuracy how many people who have had orders granted have come together again?—I put it at 50 per cent., and I should like to show how I get at that figure. Before I mention my reason for saying 50 per cent. I should like to state that I think that 75 per cent. is rather high, because my experience is that where a husband is paying a weekly maintenance regularly, and there is no necessity for the wife to institute proceedings for arrears, in many cases she does not take the trouble to take up the order. In some courts the order is served on the husband at the time it is made and a copy is given to the wife. In other courts the copy is not given to the wife. It is left to her to apply for it when she wants to institute proceedings, and my own experience is, that in many cases they do not trouble to come for the orders until they have to take proceedings for the arrears.

8890. They let them lie there because they get the money without them?—Yes. They cannot institute proceedings for arrears until the order is produced.

(*Mr. Brierley.*) Then they have to pay for them.

8891. (*Chairman.*) That seems another ground for saying you cannot draw a sound conclusion from the mere fact that the orders are not taken up?—I think for that reason that 75 per cent. is too high.

8892. How do you get at your 50 per cent?—The reason I am able to get at 50 per cent. is because up to the beginning of last October the justices left the husbands to pay direct to the wife. Owing to the brutality and the hardship on the wife this led to, the justices took the course of having all the orders made payable, unless the wife asked specifically otherwise, through my office, and since October we have a correct record of, I think, every case granted except one. It is from those records that I am able to speak accurately, and it is upon that I base my 50 per cent.

8893. Have you the figures?—I give them later on.

8894. Then we will come to them in due course?—May I say at this stage why I think it would be a great disadvantage to grant a divorce even in the proportion of cases in which it might be possible to do so, and that is, if you grant a divorce the marriage tie would be completely broken, and if the parties came together again it would render the future offspring illegitimate. There is another point. I do not think the majority of those people would take the trouble or so effect a reconciliation as to come together again if they had a divorce, whereas in the case of a separation order the marriage tie is merely suspended for a time, and if they come and live together again, the whole thing is complete by their own action. They are still a married couple. I am certain that they would not take the trouble to be remarried nor would they risk it. If you granted any proportion a divorce, it would lead to a large number being kept asunder who are now brought together again, naturally.

8895. In time they may go back to their old position, whereas otherwise they might come together without troubling to be remarried?—Yes, it is germane to this point. The same applies to the suggestion that has been made, that magistrates should only make separation orders for a limited period. One month was mentioned this morning, and the period has been mentioned before by a previous witness as six months. I think that would have a very bad effect indeed, because I believe the wife in all those cases would feel it absolutely a duty to keep apart for that specific period; she would think that she would prejudice her future rights by submitting to her husband before the expiration of that time. Where it is permanent nothing is said about the time. The result is, there is an equal opportunity or an equal inducement to come together again at the end of a week, or a month, or six months.

8896. Have you considered the point, that if the two are apart and the husband has turned over a new leaf, and is leading a better life, that he should be entitled to apply to rescind the order?—I had the advantage of hearing that suggestion this morning, and the difficulty I see about it is this: The husband would be able to easily impose upon the court. He would behave well for a month, or perhaps six weeks, and would bring evidence to show that he was an absolute model for that period. The parties would then go together again, possibly for two or three months, and he would behave just as badly to his wife again, and the result would be another child, probably, so that the result would not be satisfactory.

8897. Might not that difficulty be met by saying that no such application should be made before a certain time?—It might be; but I think the drawbacks would remain the same. If you left it to the discretion of the court they might be able to work out their own salvation in this as in other ways. When we get these couples together we very often have an informal talk with them; they will unburden their whole story to the court, and very often, especially through the agency of the police court missionary, one is able to patch up a reconciliation, and in many cases we should be able to ascertain in this rough and ready method whether the husband had turned over a new leaf.

8898. What was passing through my mind was, that an obstinate woman who had an order, rightfully enough originally, a permanent order, might not be always able to adhere to that if the court had some discretion on the application of the husband to rescind it?—That would happen in a few cases, but my experience is that the obstinate woman is rare. In the very great majority of cases the wives are very long suffering indeed with their husbands, and will put up with

almost anything. It is incredible what they will put up with.

8899. That speaks very well for them. Then you go on to deal with cases in which you think divorce might be desirable?—I gave one instance. I do not know whether you think it worth while reading it.

8900. You say, "But cases do undoubtedly come "before the court from time to time in which a divorce "seems to be really desirable." It is owing to the present cost of divorce proceedings they cannot get it?—Yes. May I read this case? I think it is one of the most typical cases. M. B. applied on 1st December 1909 for a separation order under the 1895 Act, on the ground of her husband's desertion. The facts were these. They were married on the 26th June 1907, at a registry office, she being on the music hall stage and he a photographer. She was under contract to go abroad for a lengthened tour, and he persuaded her to marry him on the eve of her departure, because he appears to have thought she might marry someone else. They became married, but did not cohabit, and she left the country within a few days. After she had been away some time, he ceased to correspond with her, and ultimately became infatuated with and seduced another woman. Later he began to live with this woman, and still does so, and now they have an illegitimate child. The wife returned after a year's absence, and found out what was taking place. She asked her husband to give up the other woman and make a home for her, but he refused. She was then earning a living from the stage and did not require maintenance from her husband. Owing to worry and other causes, her health had since broken down, and she was left penniless. In fact, we gave her assistance out of the poor box through a police court missionary when she came to the court. She was given a free summons, and got a maintenance order for 8s. a week in due course. Her age is now 26, and one can hardly imagine a more suitable case for a divorce on the ground of two years desertion coupled with her husband's adultery.

8901. You mean that she had not the means to get up a case?—She had no means and was penniless when she came to the court.

8902. Is that a solitary case or are there other cases on the same lines?—There are undoubtedly cases, but that is a most marked case that has come under my notice.

8903. That is a case of considerable hardship?—Very great hardship having regard to the age of the parties and the circumstances under which the desertion took place.

8904. If cases like that as well as general considerations lead to the establishment of a local court, what would you recommend?—Suggestions have been made that judges of assize should be empowered to grant divorces, but I do not think that is any remedy in favour of the poorer classes. They could not afford an assize action wherever it was.

8905. I suppose you would consider the case you have alluded to is not quite in the class of life that ordinarily comes before the police magistrate. They seem to be rather above that?—I should not be prepared to say that. At the time she came she was penniless. She was in education and general standing above the usual class undoubtedly, and the man being a photographer was above our usual class.

8906. You do not favour an assize action?—I do not think it would be a real improvement in the present case. A person who can afford an assize action can afford to come to London.

8907. You then deal with the recommendation made by the Lord Chancellor's committee to grant jurisdiction to county courts. Will you tell us what is your opinion about that?—My opinion is very like what you have heard from Mr. Roberts, that there is a class above that class that comes to our courts who cannot afford to go to London. For such cases a county court might be a desirable place to go to, but I am bound to say this: I do not like the idea of a county court granting divorce for two reasons, not that I have any distrust of the court, but the idea in the mind of the public undoubtedly is, that a county court is a place where debts are collected, and so on. That is absolutely wrong, but it is a popular opinion. I know that the county court at present is exercising very important jurisdiction, but that is not the point from which we must view it; we must view it in the same way as the public thinks of it, and the great majority of them believe that you can swear anything in a county court; it does not matter; and I believe if divorce cases were taken in the county court that collusion would be rife and you have no adequate means to deal with it. I propose to show how I should deal with it, at a later stage, if it came to the police court.

8908. With regard to jurisdiction you then discuss the question of a dividing line of income and suggest that no one who is not subject to income tax could at present out of his or her own means go to the county court. What sort of line do you suggest?—That seemed to me the best of lines. The obvious line is wages or payment in other ways, but that would cut out a very great number of people who at present are quite poor, but do not receive wages, such as small shopkeepers, and persons trading and so on. Nowadays, owing to the very much better and stricter enforcement of income tax, by employers having to give returns of everybody they employ, any person receiving more than 160*l.* a year has to pay income tax and there is a way of getting to know whether a person does in fact pay income tax. You can always refer to the records to find out.

8909. The point is if you wish to fix a dividing line that it might be tested by the income tax?—May I say in passing, how many people that affects. In 1907, the total number of persons paying income tax was 762,582. If you multiply by 5—that is the usual figure taken in the returns.

8910. To allow for the wife and children?—Yes. We get approximately 3,800,000. This represents practically one-ninth of the total population of England and Wales taken at 34,000,000. Since 1907, might I also say that the number paying income tax has gone up because of the stricter means of enforcing the income tax, so that the number affected is very large indeed.

8911. The other test would be wages?—The drawback of wages is that you would cut out a great many people who are quite poor people, paid monthly, or earning a precarious living by trade.

8912. Those are details of the matters dealt with in the end, which it is hardly worth while going into very carefully?—May I mention one matter. It is the next point in my proof, that at present there is no limitation as to anybody coming into the police court.

8913. Except the fact that you cannot get more than 2*l.* a week?—Yes, but there is nothing to prevent a millionaire's wife coming to the police court if she merely wants a separation order. She can get it there just as easily as she can in the High Court, subject to the right of the court of summary jurisdiction to send the case to the Divorce Court if they think it more suitable for that court.

8914. The next point is, "there are precedents for "giving a concurrent jurisdiction to the county courts "and the police courts if such was thought desirable. "But for the very poor, and they are the vast majority, "the court of summary jurisdiction is the only court in "which matrimonial cases should be dealt with in "substance"?—Yes.

8915. You mean if divorce jurisdiction were given, that it would be better executed in a court of summary jurisdiction?—Yes.

8916. Do you mean that before lay magistrates?—Yes.

8917. We have heard it said that the county court judges would not be competent to do it by reason of lack of uniformity. Do you think that the lay magistrates would be better able to do it?—I think they would be more uniform, but I do not know who has said that.

8918. Which would be more uniform?—I think lay magistrates, with the safeguards I talk about later on, would be more uniform than county court judges.

8919. To give divorces?—Yes, because I suggest that the lay magistrates should be chosen out of a

committee, as was suggested by a witness yesterday, which each bench should be compelled to appoint each year, similar to the licensing or lunacy committee, and that each court of summary jurisdiction trying these cases should consist of three magistrates, whose decision should be unanimous. There are other safeguards which I refer to.

8920. You point out the advantages of proceeding in such cases in the police court. Will you just read what you say about that?—First, that whenever a difficult point of law arises, there is competent advice ready at hand.

8921. What is that?—The clerk.

8922. Would you substitute the clerk for a judicial officer appointed by the Crown, the county court judge or the High Court judge. We have had the opinion of the judges of the supreme court that it would not be desirable that the matter should be taken out of their hands. You think that legal advice should come from the clerk?—Yes, because at present the clerk has to give advice in far more difficult matters. He has to advise upon most difficult matters in connection with the Licensing, Rating, Food and Drugs Act, the Merchant Shipping Act, and other Acts, upon which points arise every day. The statutes conferring jurisdiction upon courts of summary jurisdiction have enormously increased in number and importance in recent years. The second point is that the justices combine in themselves the practical experience of men of the world, with the common sense and sympathy of a jury, making justices the admirable judges of fact which they have for generations proved themselves to be, and by which they have earned for themselves the respect which is undoubtedly shown, more especially by the lower classes, to the unpaid magistracy of England. If a court of three justices was provided for, as I suggest, I think you would get all the advantages of a small picked special jury to try these cases.

8923. When did the justices you are speaking of separate between separation orders and maintenance orders?—I cannot tell you the exact date, but I think it is 12 years ago. It is certainly before my time, 7½ years ago. We take nothing else at that court.

8924. That is not the point. The magistrates have lately distinguished between an order which gives separation and an order which only gives maintenance?—I beg your pardon.

8925. When was that first started?—After the decision of Harriman *v.* Harriman.

8926. What is the next point?—(3) That the poor woman who applies for a summons, and can satisfy the court that she is in a state of poverty, receives a summons free, and has no fees whatever to pay. The court orders the husband against whom the order is made, to pay the small cost of the proceedings before the court. (4) That except in the preparation of proofs and arrangement of evidence, the applicant is under very little disadvantage if she is not legally represented. The magistrates' clerk asks her all the questions which his experience tells him are necessary to elicit the truth of the complaint she has made. The parties are given great latitude as to questioning each other and making statements, by which and from which the court is invariably put upon the scent of facts which soon come out on questions being asked. (5) That the magistrates have in their officers, the police, the most admirable medium for enquiry in suitable cases. In small places the policeman knows the circumstances of nearly every family, and it would be quite impossible for facts to have existed which would warrant a divorce being given without the local police knowing a great deal about such circumstances. In large towns the ability of the police to procure information required by the bench is proverbial, and the court would undoubtedly in such cases, if there was the slightest doubt in the matter, use their power of adjournment, and in the meantime request the police to make any enquiries which appeared to be necessary. I would like to add a 6th ground. If any question of reconciliation is to be attempted, all the police courts, which do a large business, have their court missionaries who seem to be the very best class of person to bring about such a state of things.

8927. You think, therefore, if the choice of a local court lay between the county court and the magistrates that it should be conferred on the lay magistrates?—Yes.

8928. Do you think that should be done now to meet any cases which arise in which there is hardship such as the one you have suggested?—May I express my opinion. Personally, I should be sorry to see it, but I am bound to say that I think public opinion demands it.

8929. Do you mean that you are speaking of Liverpool?—Yes, and of the country generally. I do not know whether I am entitled to give my personal opinion about it, but I should be sorry to see it. I think, however, as part of a social question, it has got to come, as it were.

8930. You are dealing next with some points against the police courts having jurisdiction, which you meet by saying that the number of cases is large which are decided, but that the appeals are not numerous?—That is so.

8931. And that they have to consider difficult questions of law and fact?—Yes, and in regard to that matter, we are considering daily, in applications under the Bastardy Act, the very difficult point similar to adultery which arises in a divorce case.

8932. Does your opinion come to this, assuming it is desirable that this jurisdiction should be conferred, you think the suggestion that the jurisdiction should be confined to a judge of the High Court is not maintainable?—I do not think officials would state that view if they knew what went on in police courts. It is all very well to run down an inferior court when you do not know its procedure. I am bound to say in the thousands of cases that come before us, the successful appeals are extraordinarily few, and we have to decide at very short notice the most difficult points.

8933. You do not want to run down county courts, I daresay?—I do not, because I have the highest opinion of the Liverpool county courts.

8934. You think that your tribunals are more suitable?—Because I think we are in a position to put more safeguards which, I think, are necessary before you make divorce too frequent.

8935. I quite follow your point. You do not agree with that passage in the report of the county court committee which does not recommend the courts of summary jurisdiction, for the reason you have already given?—Yes, nor do I think that committee heard any evidence as to the present way in which separation orders were granted.

8936. The rest is argumentative. Will you state the safeguards you suggest if divorce jurisdiction were to be conferred on the police courts?—Yes. I should divide them into procedure and evidential requirements, and I should make these so as to prevent as far as possible any one of four things taking place, namely: (1) the laying of imaginary charges; (2) any tendency to extend the grounds prescribed by statute; (3) the making of orders without sufficient corroborative evidence; and (4) collusion. To meet these points the following suggestions are made, and in the light of experience in other cases they would probably prove sufficient, and at the same time—and this is very important—the procedure would be kept simple and cheap. I believe that is one of the great objections to divorce practice at present, that the procedure is so cumbrous and so expensive. I think if you are going to put any facilities in the way of the poor, you must provide a simple and cheap procedure. Dealing with the point as to sufficient safeguards by means of procedure, first it need not be very different from that already existing in other cases coming before the police court. The absence of pleadings has not caused inconvenience or injustice either in separation cases, or other cases far more intricate, as for instance those already referred to, such as the Food and Drugs Act, the Merchant Shipping Act, and the Licensing Act. But it might be necessary if divorce was asked for to require a sworn information by the applicant. At present she has not to make a sworn information. A sworn information is only necessary at present for a

warrant, but if divorce were granted it would be advisable to have a sworn information as the commencement of the procedure, and in it to allege the person or persons with whom, and the dates between which, the adultery has been committed, if known. Those particulars should be furnished to the respondent and co-respondent. The hearing should not take place at a less interval than seven clear days after the service of the summons. Each bench of justices should be required to elect each year a statutory committee, and the cases should come before a court composed of three justices, whose decision should be unanimous. Then, I think that a shorthand note should always be taken of the proceedings for subsequent use as I suggest later on. May I make this observation with regard to the three justices. The Royal Commission which sat in 1853 recommended, I noticed when I was reading their report a day or two ago, that three judges should sit in all divorce cases, and if we were now going down to the lower classes, I take the same position and take three justices for the poorer classes.

8937. That was abandoned very soon afterwards, and there was only one?—Yes.

8938. It has been for 50 years only one?—Yes, but at the same time it was thought desirable to put that in as a safeguard.

8939. Now with regard to evidential requirements. I think this is really what we need trouble you about, You say corroboration would have to be required. I do not want to go through anything that is only general observation. You would require witnesses to come without payment of conduct money?—Yes, because it is so necessary to have them there. I think the witness summonses should be served by the police, and should be explained to them. At present if a witness is subpœnaed to attend and no conduct money is given he need not attend.

8940. You also propose that public funds should be responsible for the costs which they cannot incur themselves?—In special cases, because I think the necessity is so great to have proper witnesses there.

8941. With regard to collusion you would submit to the police a copy of the notes taken?—Yes.

8942. That would be possible wherever the case is tried?—Yes, it would, but there is this advantage, the police are the officers of the court in the district, and we find that the police will do for a court of summary jurisdiction anything we ask them to do. It may not be the same with other courts. I would not allow any decree to be made absolute until the police, or the court, had satisfied themselves that the necessary enquiries had been made and no collusion was found to exist.

8943. You are against allowing any award for damages?—Very strongly indeed. I think it would be a great mistake, if divorce is made cheaper, to allow any court other than the High Court to give damages.

8944. We now go to the division you have made on the question of the separation orders. You set out some tables with regard to Liverpool?—Yes.

——	1905.	1906.	1907.	1908.	1909.
Summonses issued	671	681	708	716	755
Orders made:—					
Desertion	102	107	109	125	126
Persistent cruelty.	121	106	135	131	125
Wilful neglect	8	13	10	28	20
Aggravated assault.	15	12	6	17	9
Habitual drunkard.	15	14	24	20	23
Total orders made	261	252	284	321	303
Refused after hearing.	90	88	95	101	85
Total cases heard	351	340	379	422	388
No appearance of the parties, and cases withdrawn.	232	201	204	126	244
Summonses not served.	88	140	125	168	123
"	320	341	329	294	367
Totals	671	681	708	716	755

8945. You say out of 755 cases, that 75 per cent. of the cases in which applications were made for summonses had children, and 25 per cent. had none?—Yes, those are percentages of the applications.

8946. In the case of the orders actually made, 72 per cent. had children, and 28 had none?—Yes.

8947. You say that shows that both in the applications and in the orders made, the proportion of childless cases is largely in excess of the ratio for the whole population. Does it show that?—Yes. I understand, although there are no accurate figures obtainable, it is only about 10 per cent. that are childless marriages, and when you get to 25 per cent. it shows the difference at once. I think the absence of children does lead to domestic unhappiness.

(*Sir Lewis Dibdin.*) This table which has been put in explains why the number issued is so much larger than the number tried.

8948. (*Chairman.*) Will you tell us about that?—May I take last year? The total number of summonses issued was 755; the number actually heard was 388.

8949. You need not state how they are made up; the point is why the difference is so great between the number of summonses issued and the number heard?—Because there was no appearance of the parties, and cases were withdrawn in 244 instances. Those would include many cases where a reconciliation had taken place between the issue of the summons and the hearing.

8950. (*Sir Lewis Dibdin.*) There was a further number of 123 summonses not served?—Yes.

8951. Why was that?—Because the husband had absconded in many cases and left the address given. We get a great many cases of summonses not served.

8952. What does that mean?—That the wife does not know where he is.

8953. He has disappeared?—Yes. The police can only serve these summonses on information given to them by the wife as to where he is to be found.

8954. (*Mr. Brierley.*) He may sleep in a different lodging-house every night?—Yes.

8955. (*Chairman.*) We may assume those are desertion cases?—The majority of them are, undoubtedly.

8956. You cannot tell us whether they are cases where he has gone for good, or turns up again?—If the wife knows where he is, she will readily enough come down to the court.

8957. You would not be able to identify whether she has taken out another summons later on?—She would not take out another summons because the first one would be in force. We file them, and tell the wife to let us know if she hears where the husband is, and the original summons with the date of hearing altered goes out.

8958. Does that mean that out of 755 summonses 123 were never served?—During 1909.

8959. May we assume from that that the husband has disappeared, so that he can never be served?—Practically speaking you may, because the figures are fairly constant in the different years, but we may get a few of those this year that were marked "Not served" last year.

8960. It means a very large number, at any rate, disappear without being capable of being served?—Undoubtedly.

8961. Are these cases in which if, after four years, he was not heard of, you think a divorce might be

allowed?—I am inclined to think in less than four years.

8962. Two years?—Two years. I make a suggestion at a later stage that wilful and deliberate desertion should constitute a ground of divorce after two years.

8963. I am sorry I anticipated, but I thought it convenient to ask that now. The tables will show there is a large proportion of those cases?—Undoubtedly.

8964. Is Liverpool a place where they can get to Canada and America easily?—I should think we have a more changing population in Liverpool than in any other town in England.

8965. What are these tables, which you say are of interest, directed to show?—To give accurate information on points upon which you have had numerous surmises by other witnesses. I will not read them unless you like to hear that.

8966. We want everything that will throw light on this question?—I have these figures actually from the cases in our court, and I can say they are accurate, because we have to record these particulars.

8967. Will you give us them?—One or both of the parties 40 years of age or over, 30 per cent.

8968. Thirty per cent. did what?—Of the total number of separation orders granted, 30 per cent. of those were cases where one or both of the parties were 40 years of age or over.

8969. What does the 30 per cent. show, that they had resumed cohabitation?—No, where separation was granted.

8970. Of the ages of the people who get the order?—Some witnesses have said 90 per cent. are after a few years of marriage, and so on.

8971. These do not form part of the 50 per cent. or over who resume cohabitation in less than six months after the making of the order?—No.

8972. You are going to show what are the ages of the parties who are permanently separated?—Yes, and I take permanence to be after six months.

8973. (*The Archbishop of York.*) I gather your point is to meet the suggestion that is frequently made that the bulk of separation orders are given in the case of early marriages?—Yes.

8974. (*Chairman.*) I do not recollect that anybody has said the bulk were in early married life. We have had the figures giving varying ages up to quite that time. However, that is the point. Will you give us that?—"One or both of the parties 40 years of age or "over, 30 per cent.; one or both of the parties 30 years "of age and under 40, 34 per cent.; one or both of "the parties under 30 years of age, 36 per cent." The proportion of those under 30 years of age would probably be considerably larger if the figures were available for all those who obtained separation orders, I think, because they come together more readily. That is my experience.

8975. Those 30 per cent., 34 per cent., and 36 per cent. are percentages of the total orders made, 30 per cent. where one or both of the parties 40 years of age or over, when they have not come together?—Not of the total orders, but those that are permanently separated for six months.

8976. Orders have been made and they are apart for six months.

(*Mr. Brierley.*) According to you, it is 15 per cent. of the total orders.

(*Chairman.*) 15 per cent. still keep apart.

8977. (*Mr. Brierley.*) 15 per cent. of the whole number of orders made, in which the parties are 40 years of age or over?—I do not think so. I think the proportion would be the same; because you double the number you cannot halve the proportion; the proportion would keep about the same.

(*Sir Lewis Dibdin.*) We shall get into confusion if we alter the witness's basis of calculation. It is clear if you follow his proof.

8978. (*Chairman.*) You think your proof is clear; we shall see it afterwards. What is the next, about parties married 10 years and over?—"Parties married "10 years and over before separation, 46 per cent.; "parties married 5 years and less than 10 years before "separation, 27 per cent.; parties married less than "5 years before separation, 27 per cent."

8979. Those are still persons who are permanently separated after six months?—Yes.

8980. And orders only made in those cases?—Yes. I think 27 per cent. is accounted for, because in a great number of these youthful separations they go together again.

8981. It goes down as they get younger?—Yes, because they go together more readily.

8982. Then there is "Parties married in church, "82 per cent."?—And parties married in registries, 18 per cent. I believe the same comment would apply in the case of those married at registry offices, as many of the youthful marriages appear to take place there. I think that is so undoubtedly. Then "both parties "Protestants, 53 per cent.; both parties, Roman "Catholics, 38 per cent.; mixed marriages, 9 per cent."

8983. What is the conclusion you draw from these figures you have given us?—They are facts, and I do not know that I can draw conclusions.

8984. You proceed to say, "Commenting on the "figures giving the number of orders made, it will be "seen that by far the greater number are due to "persistent cruelty or desertion"?—Yes, that is referring to the table I put in.

8985. Drink is at the bottom of most of the persistent cruelty cases?—Yes.

8986. Do the justices require corroboration?—If possible, from persons outside the family. Of course it is very difficult occasionally, but as a rule we try to get it. We have very little difficulty in cruelty cases, but a great deal of difficulty in desertion cases.

8987. The next point is only a proof of desertion, apparently, and the necessity for corroborative evidence. I see in Liverpool you have a working rule not to grant desertion orders unless the husband has been absent at least a month?—Yes.

8988. You do not act instantly if he goes away; you take a common-sense view?—We try as far as possible to resist their taking proceedings.

8989. That goes on longer by the summons not coming in for a little while, so that you get six weeks?—Yes.

8990. So that then you think it is really a desertion?—Yes. The difficulty is very great in some cases, because the wife is on the verge of starvation very often.

8991. Wilful neglect is very similar to desertion?—We find it so.

8992. In such cases the wife has to leave home to get the order. You think that ought to be done away with?—Yes. It is very difficult indeed for her to drive her husband away.

8993. Aggravated assaults are very few?—Very few indeed.

8994. As to habitual drunkenness cases: you have a table of those which I think may be interesting?—Yes. The following is the table:—

——	1905.	1906.	1907.	1908.	1909.
Total number of applications.	65	68	57	70	72
Orders made -	15	14	24	20	23
Refused after hearing.	13	9	7	11	9
No appearance of the parties, and cases withdrawn.	29	38	21	28	30
Summonses not served.	8	7	5	11	10
	50	54	33	50	49
Totals -	65	68	57	70	72

Out of these totals, the following are the figures relating to complaints laid by husbands:—

——	1905.	1906.	1907.	1908.	1909.
Number of applications.	41	47	38	45	36
Orders made -	8	9	11	10	12

8995. You say that the number of orders there made is considerably smaller in proportion to the applications than in the other classes of cases. Why is that?—This is due to the fact that the Liverpool justices in these cases rarely make orders without first adjourning them in the hope that the intervention of the police court missionary may render the separation unnecessary. We act more largely in these habitual drunkenness cases in such a way than we do in other cases.

8996. Do those numbers agree with the previous figures? You have the total number of applications in 1909 as 72. The others are only husbands?—I put that table in because that is the only Statute on which husbands can come to the court.

8997. Take 1909. There were 36 applications by husbands, and only 12 orders made?—Yes.

8998. They see what the missionary can do before they make an order?—And the difficulty is to know what can be done with the wife.

8999. You solve that difficulty in Liverpool?—As a rule we make the money payable through the police court missionary.

9000. To the wife?—Through the missionary, and he spends it on her behalf, so that it could not be used for drink.

9001. The husband, even if he applies, has to provide something for the wife?—Yes.

9002. Do you find the clause providing that the wife may be sent to an inebriate reformatory any good?—No good; the wife will not be sent away to an inebriate reformatory, and if she would go the husband would not be able to pay the necessary money to keep her there.

9003. What is the effect of separation orders generally?—I think they are a very great advantage to persecuted wives.

9004. Will you give us your reasons for that statement?—I think I gave the reason in the commencement, namely, that with these separated wives all they wish for is a living maintenance, and to be freed from the brutality of their husbands.

9005. I think we might get from you these figures about the state of prostitution as regards married women; they may be useful. Will you give us the figures?—"It has been said that to a separated wife "there is nothing left but the gruesome choice between "the workhouse and the streets." That is quoted from a letter written to the "Times" by a London police court magistrate. I do not think this is borne out by actual experience. If so, we should have the Poor Law officials constantly inquiring about the orders, so as to recover the arrears of maintenance from the husbands on behalf of the wives, and incidentally to pay the union back the cost of the relief to the wives. We do not find this to be the case. From that I draw the inference that not very many separated wives find their way into the workhouses. Then, with regard to separated wives being frequently driven on to the streets, if that were so we should expect them to come up before the court for soliciting. We had 1,748 prostitutes convicted for soliciting, &c., in Liverpool in 1908. Of these, 278 were bound over or discharged after a caution, usually for first offences. In almost all these cases the police court missionaries interview the prisoners, and they tell me that in very few cases, probably not more than 2 per cent., or 3 per cent. were the women separated wives. The same applies to the other 1,470, because all of them must have been first offenders at some time, and most will have come under the missionary's notice at the commencement of their career

9006. You speak then of a point which has been mentioned, that the justices give power to the wives to get the money paid to the court, in order to avoid any hardship in collecting it?—Our experience is that it is so beneficial that if any amendment is to be made in the law, I think it ought to be made compulsory, if the wife applies for it.

9007. You have dealt with the question of reconciliation already, I think?—May I just mention on the ground of reconciliation that, before we undertake to have the money paid through the court, we used to have it made payable through one of the police court missionaries who was attached to the Temperance Society, and they had an office where they could do the work. He had 300 cases made payable through him, and found from his records, when I asked him to turn them up for the purpose of this proof, that in 75 per cent. of the cases the parties had resumed cohabitation after a short separation, but I think 75 per cent. is larger than the average throughout the whole number, because he would use his utmost endeavours to get them to come together again, whereas we look upon it as a matter of machinery, and we do not make any effort.

9008. You have given us your figures?—50 per cent. I give.

9009. The next point is, you set out the number of husbands brought up by warrant, that is, to be sent to prison?—Yes.

9010. In 1905, there were 118; in 1906, there were 111; in 1907, there were 126; in 1908, there were 145, and in 1909, there were 175?—I should not like to say anything like that number had been sent to prison.

9011. Have you got that figure?—No, but you may certainly take it at less than one-third of that, because we do our utmost to get the money for the wife. We will do anything to keep the man out of prison, because he then ceases to be a wage-earner. It is only when he wilfully refuses to pay when in a position to pay, that we send him to prison, and, although we are not compelled by law to enquire into means, we do, in fact, make the most minute enquiry as to means in order, if we can, to keep the man out of prison.

9012. You go on to say these figures are very significant when one considers the number of separation orders made?—It goes to show the great number of reconciliations which must take place.

9013. Will you give us those figures, please?—Yes. If one takes the average number at 250 per annum, and multiplying by 10, to get some idea of the total number presumably in force, one gets 2,500 for Liverpool. Assuming only 50 per cent. voluntarily resume cohabitation, it leaves 1,250 as being the number actually in existence. Viewed in the light of the above small number of applications to enforce the orders, probably 50 per cent. is considerably too high a proportion. That is only further proof to show that 50 per cent., taking it on the whole, is not above the mark.

9014. Would you say from your estimates that 1,250 orders are in existence?—No. I think, assuming that number to be correct and that a large majority of them kept apart, 1,250 would be a maximum. I think, as a matter of fact, there are nothing like 1,250.

9015. Orders permanently in operation?—In Liverpool.

9016. Can you tell us how many you think there are?—No.

9017. There is not enough to go upon?—No, it would be purely guess-work.

9018. You say where reconciliation does take place the result is not always happy; sometimes a second application is made?—Yes.

9019. Then poor law relief is sought in many cases by women who have been granted a separation order, but they have returned to their husbands. What is your point with regard to that?—In many cases they return to their husbands by reason of a false promise given to them by their husbands that they will amend and they resume cohabitation, thus breaking the order, and the old cause of trouble arises and they refrain from coming a second time. In many of those cases they undoubtedly find their way to the workhouse.

They cannot enforce the order because it has been broken by the cohabitation.

9020. Why do they not go again before the justices?—They have a feeling that they do not like to trouble a second time: I think it is that as much as anything.

9021. With regard to the orders leading to immorality, you point out that in 3 per cent. or 4 per cent. that may be the case with regard to wives, but with regard to husbands you state you have no knowledge. How far can you specify it?—I have no possible means of ascertaining that, but I have the greatest faith in my figures with regard to wives for the reasons I have mentioned.

9022. You gave us the results, but there is a table which shows the number of summonses to discharge the order on the ground of adultery, and the results?—Yes. This table shows how very rarely it arises.

——	1905.	1906.	1907.	1908.	1909.
Summonses issued	9	10	6	2	9
Orders discharged	3	6	4	1	5
Refused after hearing.	4	2	1	1	1
No appearance of the parties, and cases withdrawn.	2	1	1	—	3
Summonses not served.	—	1	—	—	—

9023. You draw the conclusions which you have just told us partly from what you have told us, but you say the same conclusion may be drawn from the fact that statistics show a steadily decreasing number of illegitimate births. What is the point you make there?—If this immorality was as widespread as it is said to be as the effect of separation orders, I think the illegitimate birth-rate would go up.

9024. We have had some figures about that. I do not know whether you have any figures to show us?—No. I looked at the official figures and saw they were steadily declining and had been for the last 50 years, and I also looked to see whether the Act of 1895 had made any difference, and there was no difference.

9025. With regard to amendments which should be made in the law relating to separation orders you put forward certain points for consideration. The first point is the change which has taken place by eliminating from the order, the order for separation where it was not required. That we have had so much evidence upon that we can dispense with it, I think?—I do not know whether any witness has explained the real legal difficulty there is about it. If I may read what I have said in my proof it may shorten it. Within the last year, owing to the decision of the Court of Appeal in Harriman *v.* Harriman, orders in desertion cases heard in Liverpool have in general omitted giving the wife the privilege to refuse cohabitation with her husband. This change in the administration of the law preserves to the wife, it is true, a right which, according to the judgment in Harriman *v.* Harriman, she might otherwise lose, namely, the right of obtaining in certain circumstances a divorce later on. On the other hand, it introduces a difficulty hitherto non-existent, which does not appear to have been fully considered by the court on the hearing of that appeal. By section 7 of the Act of 1895, it is provided, *inter alia*, as follows: "If any married woman upon whose application an "order shall have been made under this Act, or the "Acts mentioned in the schedule hereto, or either "of them, shall voluntarily resume cohabitation with "her husband, or shall commit an act of adultery, "such order shall on proof thereof be discharged."

Clearly an order for a weekly allowance alone is "an order made under this Act"; and, therefore, the court must discharge it on proof of voluntary resumption of cohabitation.

In every case in which an order is made under the 1895 Act, the parties must be living separate at the time the summons is granted, and until after the order is made. Therefore, there must have been a break in the continuity of cohabitation at the instance of husband or wife. If after the order is made without a separation clause, the husband requires his wife to resume cohabitation, and she consents to do so, she thereby voluntarily resumes cohabitation. This would entitle the husband to come to the court and have the order discharged.

On the other hand, if the husband requires the wife to resume cohabitation, and she refuses to do so, the question arises whether the justices can enforce the order on the wife's application for a warrant for arrears of maintenance.

The question also arises, can an order of maintenance without separation be enforced if cohabitation is resumed involuntarily on the part of the wife, seeing she is not entitled by the order to prevent her husband returning to her? It is evident that the statutory power to include in orders under the Act a provision that the wife shall be no longer bound to cohabit with her husband, implies that the absence of such provision from an order renders the wife legally bound to live with her husband if he desires her to do so.

In these circumstances, to make an order for maintenance but not for separation seems illogical, and it is submitted that it is contrary to the spirit and intention of the statute. The best solution of the difficulty thus caused by the decision of Harriman *v.* Harriman seems to be not to deprive deserted wives of their right to separation orders under the 1895 Act, but to amend the 1857 Act so as to empower the High Court on production of such order, and proof of the husband's adultery, to entertain a deserted wife's petition for divorce, notwithstanding that the period of desertion may be less than two years. We have considered the effect of this decision very carefully indeed, and the result is, we believe, although we act upon it in deference to the Court of Appeal, that the order is destroyed by the cohabitation, because the maintenance order is an order under the Act of 1895.

9026. That is quite true?—A subsequent section of the Act of Parliament says on proof of cohabitation, a voluntary cohabitation, the order goes, therefore we believe, although we act upon it against our judgment, that the wife cannot enforce a summons for arrears because the order has gone by reason of the voluntary resumption of cohabitation.

9027. That is true if you put in separation or not?—It is; but I do not think it would apply so often where you have given the separation.

9028. If they choose to resume cohabitation it wipes out all on the board?—I cannot make out the reasoning for giving the wife a maintenance order without a separation order, if the object of the court was to keep the people apart. The object clearly is to bring them together.

9029. The object is to bring them together?—If you bring them together in law the order vanishes.

9030. So it does whether you put the separation in or not?—It does, I agree.

9031. There is no difference. The point that was considered was whether you could put in separation or not. It makes no difference on that point; the order goes in either case?—The point is that there is no use in making an order there is no intention to enforce.

9032. Why not?—In one case the wife cannot resist the husband coming back, and in the other she can. That is the point. We can keep them at arm's length. It is not necessary she should do so if the only ground of the separation is that he is not paying her?—My view is that if you do not put the separation clause in, a husband forces himself on his wife, but does not go to live with her and you destroy the maintenance order.

9033. You do not want to keep them apart, I suppose?—You want to bring them together in every sense. You do not want to have a legal cohabitation and a separate household. You want to bring them together in every way, I consider.

9034. This is an argument upon that point, the next part of your proof?—Yes.

9035. If any members of the Commission want to ask you about the rest of that part of the proof it is before them. You make a point about amending one of the Acts, the habitual drunkard point. You would like to see an amendment to the effect that no order should be made under the Act if the party asking for it had conduced to the other's drunkenness. That at present is not provided for?—We do it in fact, but it is not provided for.

9036. You think it ought to be?—I think so. In connection with that subject may I say that I think the phrase "habitual drunkard" ought to be defined in some better way.

9037. You think it is too strict?—It is a most unsatisfactory definition.

9038. Have you formulated one we could place before the Legislature?—I had the advantage one day of having a conversation with the late Lord St. Helier on this point, and I was telling him the difficulty we had in construing it, and he said, "How in practice do "you construe it?" I said, "It is very difficult indeed "to state in short words what we do, but if a husband "gets drunk whenever he gets a reasonable oppor- "tunity, then he is an habitual drunkard." Lord St. Helier said he thought that was about as good a definition as he could suggest.

9039. That might apply to an honest sober man working six days of the week, who got his wages on Saturday, and got drunk?—I think if he got drunk every week he would be an habitual drunkard.

9040. It may not be a ground for separating him from his wife?—No, but you might reasonably leave a certain amount of discretion in the court.

9041. You have already mentioned the point, I think, that as regards the reformatory you consider it should not require a wife's or a husband's consent, but that the magistrate ought to be capable of sending them in a proper case?—Yes.

9042. I will pass on to the question of the publication of reports. Will you kindly tell us what view you have formed in Liverpool upon that?—I think in the public interest it would be quite sufficient to publish the order or decree that had been made between the parties, giving their names and addresses, and the ground of the decree. If the papers would not publish it voluntarily, I should have it inserted the same as a London Gazette notice, or bankruptcy notice.

9043. I see you have a report of the head constable of Liverpool. Would you like that read? I am not sure if he is coming as a witness. Perhaps we might take that?—This is what he said in his Annual Report for 1905, which I fully endorse: "Of newspapers, "many so-called comic ones seem to make a speciality "of suggestiveness, while others of established repu- "tation devote more space every year to reports of "divorce, breach of promise, bastardy cases, and the "like; the propriety of pillorying those whose faults "have involved them in proceedings of this sort is "generally quoted as justifying the publication of "nasty details, but it is doubtful whether this regard "for public morals would secure space for them if "they were not so popular. The prominence they "enjoy in contents bills and headlines suggest that "they are looked upon as good copy, and likely to "help to sell a paper."

9044. You endorse that view?—I entirely endorse it.

9045. You have said you think it would be better simply to publish the name and the result; is that it?—Yes, and the parties' names. May I mention the question which has been urged about it being a deterrent? I think the Commission should consider this point, because I find it to be undoubtedly the fact that the publication of these details is a very great temptation to the young, because they feel they want to emulate the older ones in this form of immorality.

9046. Would you mind telling us what the materials are which enable you to form that opinion?—The avidity with which these details are read by the very young.

9047. Have you actually observed that?—I know it to be a fact undoubtedly. May I say there are certain papers well known to the members of the Commission that practically live on this garbage they get out of the police court. We have one in Liverpool, a monthly paper whose chief contents are filthy details obtained at the police court, and I have numerous people coming to see me asking what proceedings they could take against this paper—poor people.

9048. You have formed a very strong view as to the undesirability of allowing the details of these cases to be published?—I have, especially with regard to the young. I think it is doing the greatest amount of harm.

9049. Are you able to express any view with certainty as to its having any deterrent effect on acts of immorality?—I do not think anybody could express an opinion with certainty. I think it has been greatly exaggerated.

9050. You think that the operation in that direction has been greatly exaggerated?—Yes.

9051. You would put that in a lower scale as outweighing the scale of publication considerations?—Yes, far and away.

9052. Do you think there ought to be power in the court to exclude the public in those divorce cases?—I think so; I believe it already exists, but I think it should be used oftener than it is.

9053. There are powers under certain Acts which you mention, section 19 of the Indictable Offences Act, 1848, the Punishment of Incest Act, 1908, and section 114 of the Children Act, 1908. As to the other questions of amendment, I do not find anything in your proof: is that because you do not desire to express an opinion upon them, but keep yourself more to the details already mentioned?—I could give you my opinions, but I do not think they would be worth much. I came to speak as an expert, as to my own knowledge.

9054. (*Sir George White.*) I understand you confirm the evidence of a previous witness, that so far as the classes that come before you for separation are concerned, there is no real desire for increased facilities for divorce?—I should qualify that by saying that there is no great desire. I think occasionally there is a real desire.

9055. Why do you come to the conclusion that if it be necessary, as I think you say it is, that there should be some increased facilities to meet hard cases, that on the other hand those facilities will increase the demand? If there is no demand, why should the fact that there is a court where divorce can be obtained excite interest to obtain divorce?—I state that to be my opinion. I believe you would find it to be so. I believe the passing of the Matrimonial Causes Act in 1857 caused a great many people to get divorces who would not otherwise have done so. I think that is the tendency of all legislation. Undoubtedly it is the tendency under the Compensation Act. You get all sorts of persons putting forward claims who would not have done so before.

9056. Compensation is rather a different thing from divorce. If there is no real desire on the part of this class to get divorce, why should that desire be stimulated to such an extent by the mere fact that there is a facility to obtain it?—It is because people think at present that divorce is out of the question, and they have to make the best of things. If divorce is within easy reach they will not try to patch up their differences so much.

9057. The thing is there, but it lies dormant: that is the fact?—Yes.

9058. In the case of the husband being allowed to apply to have the order rescinded on the ground that he is altogether a reformed character, would you not take the wife into consideration in that case; if he desired to return, are not her opinion and desire to be taken into account to some extent?—I think the court would take very great account of her opinion, but, as I said before, the wives are a very forgiving set, and I think they would go out of their way to patch up the trouble if it was possible. The contumacious wife who does not want her husband back at any price is very rare.

9059. There is a question I want to ask you on the tables. You make a calculation multiplying the number of cases by 10 to produce 2,500, and you then take 50 per cent. of those cases after 10 years as probably living apart. You heard Mr. Roberts' evidence on that point, I daresay, in which he gave us a very carefully investigated case, where he showed there were only 16 per cent. after eight years?—I daresay that is very true.

9060. The number was 512 cases which were investigated, and after eight years there were only 16 per cent. living apart. There is a very great difference between that figure and yours?—You will remember I stated I thought 1,250 was well above the mark, but I gave that as a safe maximum.

9061. You have no real data for it?—No.

9062. (*The Archbishop of York.*) You said you only gave your opinion, but if your opinion is based upon your experience it has some value. Your opinion is, may I take it, that if greater opportunities are brought to the notice of the poorer classes for divorce, it will suggest to many of them a desire to avail themselves of the remedy which, without such notice, would never have occurred to them?—That is my belief.

9063. Would you say among the great mass of our working people the wonderful endurance and faithfulness they show is due to the fact that they have always taken it for granted they are married for better or for worse?—I believe that to be so.

9064. In regard to the hard cases that remain, would it be your opinion that although they were real, they were so few that the remedying of them would involve a greater balance of danger to the whole community than the advantage it would bring?—That is my personal opinion.

9065. That is all I want to get. You said in regard to increasing these facilities you felt it was necessary because of the demand of public opinion, but where in your experience have you seen that public opinion which demands this? Have you come across it in Liverpool?—Since I was asked to give evidence I have made a point of speaking to people whom I believe to be capable of giving a reliable opinion, and they seem to share that opinion.

9066. What class of persons would they be?—Among my own friends.

9067. Professional people?—Not only professional; I have discussed it with the magistrates, with poor law authorities, with relief society officers, with female sanitary inspectors, and all those people who have an opportunity of mixing with these classes.

9068. I can imagine a demand on behalf of hard cases, but have you come across any demand of public opinion on the part of the working classes themselves?—No.

9069. As to the police courts, what is the class who mainly come to the police courts? Are they not the very poor and most casual type of labourer?—It entirely depends on the class of case we are hearing.

9070. As a rule?—In certain cases we have a very high class of people, and in certain cases we have the lowest of the low.

9071. Would it not be a hardship to expect decent working folk to come to the police court to have a matter so important as their married life decided for them?—They come at present.

9072. That class, the better class?—Yes, undoubtedly.

9073. There is one question about the use of these inebriate homes under the Act. You say in Liverpool you find it is practically useless?—For these cases. We send, probably more than any other town, persons who have proved to have been habitual drunkards, simply on arrest for violence and drunkenness.

9074. Did you hear the evidence from Birmingham? The magistrate in Birmingham frequently makes use of an inebriate home in Birmingham?—I did hear that. It was not followed up by any question as to who paid for the maintenance. That is the difficulty.

9075. That is one of the reasons I wanted to get that from you?—We should undoubtedly send the wives in those habitual drunkenness cases to inebriate reformatories if we could secure the payment, but the inebriate reformatory will not take the case until the payment is secured. There is no power to come on the rates for that class of case, whereas there is when the case is sent direct under the Licensing Act.

9076. One question upon the point of publication. Would you say from your experience of the police courts of Liverpool that the precocity of the sexual evil is greatly on the increase, that a number of very young persons brought before you have gone wrong one way or the other in this matter?—I should say it was on the increase. I think the more you develop the child by education and so on you increase all these faculties.

9077. Would you say, from your experience, that comparatively young boys and girls who have learned to read in the elementary schools, read and discuss these details in the newspapers with one another?—I am sure they do.

9078. And it may very likely be a contributory cause to this precocity of sexual evil?—Yes, I think it may, undoubtedly.

9078*a*. (*Mrs. Tennant.*) I feel a little of Sir George White's difficulty in understanding your position. I should like to ask one or two questions, without pressing you on the point. You say what wives really want is maintenance and protection from the brutality of their husbands. Those who apply for separation orders would come again, you think, if they seriously want divorce. Do you not feel the economic position would, in itself, be a check upon the undertaking lightly of a divorce suit on the part of the wife?—I do not think the class of person I am speaking of considers results.

9079. If she wants chiefly maintenance and protection she would realise enough of the law to know divorce is not her best method?—I am not sure. I think in many cases she would get permanent alimony if she got divorce.

9080. That is why you think she might seek, by way of divorce, a complete dissolution of the marriage?—Yes; that is why I am against it.

9081. I have been struck by some figures in your table—by the great difference between the number of summonses which failed to be served in 1908 compared with those in 1905; it is very nearly double, although the percentage of increase in summonses issued is very small. Is there any explanation?—No I noticed that myself in getting out these figures I cannot account for it. It just happens. I think in a large number it was not known where they were living by their wives. I cannot account for it in any way.

9082. I want to ask you a question on what you say as to the effect of separation orders. You would not exclude from the influence of separation orders those people who subsequently become reconciled? You cannot rule them out in considering the influence of separation orders?—I think they rule themselves out because they go to live together again.

9083. You say, "It appears, from information "received from the poor law authorities, that there "are many cases in which poor law relief is sought by "women who have been granted a separation order, "but have returned to their husbands," and you preface that by saying, "In many cases in which a "reconciliation takes place the result is not happy." Therefore, you must take that into consideration when considering broadly the influence of separation orders?—You must, undoubtedly. I do not think the proportion is large.

9084. In your proof you say, "It appears from "information received from the poor law authorities, "that there are many cases in which poor law relief is "sought by women"?—"Many" is relative. I do not suppose there would be more than half a dozen cases in each year in each union. We have three unions, and I do not suppose the total would amount to 20 cases a year. I have no figures with regard to that.

9085. I misunderstood the force of the expression "many"?—It was relative.

9086. You are not afraid, in recommending the summary jurisdiction court, that you might make

divorce too cheap?—I do not think there is any danger on the ground of cheapness. What I should do is to hedge it round with what I call sufficient safeguards, and I think if all summary jurisdiction courts had to have a complete note taken, and that note acted upon before the decree could be taken as final, that would act as such a check on courts that they would act very carefully.

9087. As a basis for including people in the cheaper form, you would take the limit of the income tax?—Yes.

9088. Are there not a great many people who do not pay income tax, who are, in fact, in receipt of larger incomes than those who do?—I think it would be no hardship to make those persons come to the police court. They are guilty of a certain amount of defrauding if they are not paying income tax, and I would not consider their feelings in coming to the police court.

9089. There may be no hardship, but might it not be an undue luxury?—I do not think they would think it a luxury. I am assuming that the law is the same in whatever court you go to. I do not think the law ought to be different in the High Court from the police court. It is only the court they go to.

9090. (*Sir Lewis Dibdin.*) I gather your view is that judging matters by the cases that have come up for separation orders, the amount of sexual immorality which we are sometimes told exists is exaggerated?—I believe it is.

9091. You have given us the case of the wives and the evidence on which that rests. With regard to the husbands you say inevitably there is no evidence. That is an impression derived from experience?—Yes.

9092. Your view is that the balance, on the one side the good that might be done in particular cases of hardship, and on the other hand the evil that might be done to public morals by making divorce easier, is against the increasing of facilities?—I think so.

9093. That is your personal view. You told the Archbishop of York that you recognised that there was a demand by public opinion for something. I did not follow what that was. Is it this: that public opinion demands that what remedies are open to the rich should also be open to the poor?—That is my chief ground.

9094. Is that the real view of public opinion at the present time on this subject?—Yes, I think it is based on that; there should be one law for the rich and the same for the poor.

9095. Not necessarily a widening of the grounds of divorce either for the rich or the poor, but giving the poor the facilities which the rich now enjoy?—That is chiefly it. I think you get a very great difference of opinion as to the widening of the grounds of divorce. I have heard to-day one or two grounds suggested which I should be in favour of, but they would be small.

9096. I do not propose to ask you any questions about that, because your proof does not go into it, and you have chosen not to give evidence about it. I want to ask you a few questions about the percentage of reconciliations. Mr. Roberts told us, so far as Newcastle was concerned, the proportion was 75 per cent. of the orders made?—Yes.

9097. I do not know whether you heard his evidence?—Yes, I did.

9098. He based that not simply upon the orders that were not taken up, but also upon the ground, which I think is the same as that upon which you proceed, that all maintenance is paid through the officer of the court, and therefore he is bound to know what orders are in active operation?—Yes.

9099. And his percentage, 75 per cent. for Newcastle, was founded on that?—Yes.

9100. In your case, using the same evidence, it is about 50 per cent.?—Yes.

9101. You are not sure whether that is complete or not, whether it is only 50 per cent. or whether it is a larger percentage?—I think 50 per cent. is a very fair figure.

9102. You told us with the police court missionaries you had 75 per cent., and you attributed that result to their efforts?—Yes.

9103. Do you think if the same system was in force now that the same result would follow, that there would be 75 per cent. of reconciliations in your court?—I am not quite sure, because we only used to send selected cases to the police court missionary. We did not make any general rule. He only had altogether—I put the actual number on my proof—I think it was 300.

9104. I gather 75 per cent. is not 75 per cent. of the orders, but 75 per cent. of the particular orders that were sent to the police court missionary?—Yes, 75 per cent. of the 300 cases sent.

9105. That is quite consistent with 50 per cent. on the whole?—Yes.

9106. I wanted to understand your point about the great drawback of making a maintenance order without a separation order. Is it this, that after a separation order is made and the husband forces himself back into co-habitation, he is a wrongdoer and is dealt with under the order?—Yes, and we should not rescind the order because of that.

9107. It would be a breach of the order for which he would be criminally responsible. If it is only a maintenance order and the husband forces himself back to cohabitation, that puts an end to the maintenance order, whether the wife likes it or not? That is your point?—Yes.

9108. Further, the fact that the maintenance order is only made does not affect the wife with the knowledge that if she does let her husband back she loses the maintenance? You see what I mean?—Yes, I see what you mean and it is a great difficulty with us. The way we do it in practice is not to tell the parties that we have not made a separation order. It is a grievous difficulty, and I do not think the Court of Appeal considered the point.

9109. (*Chairman.*) The Court of Appeal had only to do with the dry question of law, whether the order was a bar to the running of the two orders?—But a great deal was said about the effect of these orders.

9110. (*Sir Lewis Dibdin.*) My question is only directed to trying to make your meaning clear. I wanted to ask you with regard to the justices exercising this jurisdiction in divorce, which you realise is a far graver thing than separation; do you not think that, I will not say in your court, but in some of the country courts where the separation cases are dealt with, that the speed with which they are dealt with would be unsuitable for such a thing as divorce?—I provide for that by the safeguards I suggest, and I believe if those safeguards were insisted upon, the hurry, if it exists, which I am not prepared to admit, would be done away with.

9111. Have you had much personal experience of country benches?—No.

9112. If your suggestion was carried out you said you would have a special court. Do you not think both for separation orders and if there were any enlarged jurisdiction in divorce conferred on the magistrates, that in either view, either the present state of the law, or an extended state of it, it would be a good thing if all these cases were dealt with in a court like the children's court, a separate court altogether?—I think so.

9113. From which the public might be excluded?

(*Chairman.*) In order to help us with that can you tell us who sits in the children's court?

(*Sir Lewis Dibdin.*) The same justices.

(*Witness.*) In Liverpool the stipendiary magistrate takes the children's court every day.

(*Sir Lewis Dibdin.*) At an ordinary petty sessions court it is the same justices or a selected number.

9114. (*Chairman.*) The children's court is presided over by the stipendiary magistrate in Liverpool?—He sits every morning in that court.

9115. (*Sir Lewis Dibdin.*) I want to get the advantage of your great experience as to whether it would not be a good thing in the interests of justice, whether the jurisdiction is enlarged or not, that all this matrimonial jurisdiction should be exercised under the same precautions as children's cases are under a recent Act?—I think so, undoubtedly.

9116. (*Judge Tindal Atkinson.*) I think the reason which has been suggested for most of the husbands and wives coming together is the economic reason?—Yes.

9117. That being the state of the case, where a husband habitually illtreats his wife, would it not be far better that there should be a divorce granted, which would enable the woman to marry again, rather than there should be a reconciliation which is not a real reconciliation?—I am inclined to think not. I would rather see husband and wife reconciled than separated or marrying other people.

9118. If it is not a real reconciliation, but only an arrangement because the parties cannot help themselves?—If there are no children that might possibly be the best solution, but where there are children, then it is essential to get reconciliation if possible.

9119. You have so strong a regard for the marriage tie that you would not allow it to be dissolved even under those circumstances?—No.

9120. The justices of petty sessions, I suppose, come from those justices who reside in the petty sessional district usually?—Yes.

9121. Is there any power in quarter sessions to select any special justices for any special work in a petty sessional division? There is with a licensing committee, but is there any power that you know of otherwise?—I do not know of any power, but I believe that every justice has jurisdiction through the whole of his county.

9122. He has?—I see nothing to prevent an arrangement being made by quarter sessions that certain justices should take these cases in that county.

9123. Can quarter sessions compulsorily exclude any justice of the peace from sitting if he chooses in his own petty sessional division?—Not at present.

9124. Does it not occur to you, that being the case, in cases of divorce there may be justices who have a strong opinion against divorce?—Yes.

9125. And other justices who may have an opinion that divorce should be easily granted?—Yes.

9126. Do you not think that you would have the bench in the divorce cases crowded with the one side or the other?—That is the reason I considered that point in making my suggestion, that there should be a rota chosen from a committee, and in appointing the committee you would exclude those partisans.

9127. If quarter sessions had no power to exclude them, how could you do it?—You would give them power.

9128. By statute?—Yes; at present they have no power to try divorce cases.

9129. Would not that place on quarter sessions a most invidious duty; for instance, in every petty sessional division there are a certain number of clergymen who may conscientiously have a strong objection to divorce. Would it not be invidious to give quarter sessions the power to say that certain justices should not sit on divorce cases and that certain justices should?—I think there would be no practical difficulty about it. The same difficulty may be said to arise with regard to licensing, but we do not find it in practice. Pronounced teetotalers are not put on licensing committees as a rule.

9130. The effect would be to exclude all the clergymen?—There are not so many clergymen on the Commission as you seem to think. There are comparatively few now.

9131. You say that you have a greater opportunity of detecting collusion at your petty sessions than the county court judges would have, because you have better machinery?—Yes.

9132. There was a suggestion made that the chief constable, wherever the county court judge took his divorce cases, which he would fix for a particular day, should send a representative to sit with him, who would have the police entirely under his control. That would meet that difficulty in reference to county courts detecting collusion?—To a certain extent, but by law the police are the quasi servants of the justices.

9133. The chief constable would have power, as you say the Legislature could confer power upon the chief constable to appoint somebody to act in the county court and to make the necessary inquiries?—It would be quite possible.

9134. You say that the statistics with reference to illegitimate children show that separation orders have not increased immorality, but are the statistics with reference to illegitimate children any test of immorality considering the artificial means that can be used to prevent children coming?—That is a matter of opinion.

9135. You have not considered it?—No.

9136. You rather surprised them when you said that the general opinion is that the county court judge is engaged in the county court in doing nothing but small debt collecting, that is not the opinion of Mr. Barradale who was called. His opinion agreed with mine, that the lay suitors themselves do not care so much whether it is the county court, or the High Court, it is the advisors who care. That is not your experience?—I should not be prepared to agree with that.

9137. (*Mr. Brierley.*) As you are the clerk of such a very important court as Liverpool, I should like to ask you this as to the possible amendment of the Act of 1895, which no witness has mentioned. Do you find any difficulty in enforcing these orders, in other respects than the payment of money, for instance, with regard to the custody of children. Supposing you give the custody of the children to the wife, and the husband does not obey it—do you find that happen?—In a few cases.

9138. How do you enforce it? How can it be enforced at present? May I suggest to you that there is no other remedy than an application to the High Court unless the wife could by force of arms take the child on the way to school, or at some other time?—That is so, but we have had one or two actual examples, and what happened was this. We sent a police constable to the house, and took the children away, practically by force. In another case, we got the husband to bring the children to court.

9139. Did the police consent to do that?—They will do anything they are instructed to do by us.

9140. I am afraid it would not fall within the duties of the police?—I do not think it would.

9141. Do you not think it would be an improvement if powers were given to inflict penalties for disobedience to these orders in any respect other than the non-payment of money?—I certainly think so.

9142. It would be a convenient summary remedy?—I think our powers are by no means adequate.

9143. No witness has suggested it yet, and it is a practical difficulty which occurs not infrequently?—That is so.

9144. (*Chairman.*) You told us you had conversations with a variety of public bodies, from which you gathered their views of public opinion. Will you tell us what those are, I do not mean the names?—To start with, I am on the committee of the Liverpool Law Society, and you will hear a witness from that society. We have discussed this at great length. One cannot help getting some opinion from those people. I have discussed it with a great many people in my own social scale, and with the magistrates, the clergy and the people I have already mentioned.

9145. The general view is what you have got from them?—That you are practically bound as a matter of principle to give the same facilities to the poor as the rich enjoy at present.

9146. That means, to put in it concrete shape, local courts?—Practically.

9147. If you find 75 per cent. or 50 per cent, whichever it may be, of these orders end in reconciliation do you think it is any advantage to have these order, at all without any limitation at the commencements?—I think for the benefit of the other ones you ought to.

9148. It seems rather a farce to have 75 per cent.

which are practically useless?—I think the result of the hearing in court, and the decision, and the two people bringing the case and talking in public about their grievances has a great moral effect. The husband looks at his conduct in a different way afterwards, as Mr. Roberts says.

9149. You could get that without going through the form of making a permanent order?—It is no use talking unless you have some power behind you. That is my experience.

(*Chairman.*) I thank you on behalf of the Commissioners for your valuable and interesting evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FOURTEENTH DAY.

Friday, 18th March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) There is a point before we take the evidence which I think I might draw attention to. I think the Commissioners might like to have the tables which I have now before me showing the length of sentences given at the assizes, and at courts of quarter sessions for criminal offences, and the class of offence for which those sentences are given. We then might be able to appreciate the bearing of the point which has been put before us on more than one occasion, of a long sentence forming a ground of divorce. I will just run them over, and the reason I do it now is that attention has been drawn to it, and that we may appreciate it. For instance, I have before me the table with the length of sentences under various heads of years. I will take the assizes first, and I will take the seven years sentences. There are two cases of attempt to murder; two cases of feloniously wounding; one of procuring abortion; one of unnatural offence; and one of an attempt to commit an unnatural offence; four of rape, and six of a defilement of girls under 13. The total is 17 of those offences against persons. The point seems to be brought out that some of those might be considered as offences of the sexual order, though they do not necessarily involve the actual commission of an act of adultery. The total is 17. Then the total of seven years for offences against property with violence, 9; offences against property without violence, 4; and there seem to be several under other classes, and the total for the year 1907 of penal servitude for seven years is 40, and there are much smaller numbers for sentences over that. For instance: life, there is only 1; 20 years, there are 3; 15 years, there are 8; 12 years, there are 3; 10 years, 21; and 8 years, 4. The quarter sessions is worth looking at too. There are 15 of seven years, and there is only one instance of penal servitude for over that period, which is nine years, so the total number of cases appears to be rather small. It is worth having that. Perhaps the Commissioners would like to have those figures.

Mr. ROBERT PEACOCK called and examined.

9150. (*Chairman.*) Is your name Robert Peacock?—Yes, my Lord.

9151. Are you chief constable of the city of Manchester?—I am.

9152. Have you held that position for the past 12 years?—Yes.

9153. Having had altogether 31 years' police experience?—Yes.

9154. Twenty-two years you have been a chief constable; namely, Canterbury 4, Oldham 6, and Manchester 12 years?—Yes.

9155. Has your position as a chief constable brought you into close contact with persons who resort to the police court for redress?—It has.

9156. Do you attend here in any capacity besides your individual capacity?—I principally attend as chief constable of Manchester; my evidence is based on the experience of being chief constable of Manchester; but I am also president of the Chief Constables Association which embraces nearly all boroughs in England and Wales.

9157. I think it was through the Association of Chief Constables that the communication passed which has brought your evidence?—That was so.

9158. Now you have considered the questions which have been submitted to this Commission?—I have.

9159. I need not detail them, because we know them?—Yes.

9160. But you have prepared certain tables of the orders and applications which have been made in Manchester during the three years ending 31st December 1909?—I have, my Lord.

9161. Are those made by stipendiary magistrates or petty justices?—Well, both; a good many by the stipendiary magistrate; but both the justices and the stipendiary try the cases.

9162. I do not think I need take you through them. I will ask the shorthand writer to take your proof and have them transcribed afterwards?—Yes, I think they ought to be put in, because I have worked them out in detail.

9163. Yes; but we may take those as correct?—Yes.

9164. There is only one thing I want to ask you about on them. Is there anything on these tables which shows the distinction between an order made for maintenance only and an order made in which maintenance and separation are combined?—Yes, my Lord; if you look at question 4 and the answer on page 2 you will find that. In 1907 only two separation orders apart from maintenance were made—only two.

9165. That is separation alone?—Alone, but no order for maintenance.

9166. The figures 2, 10, and 14 in the second column are for separation alone?—Only.

9167. The others on the left-hand side are both combined?—Yes.

9168. But as I asked you a little differently. Is there anything that shows the number in which maintenance alone was ordered without separation?—No; those are the exact figures of how the orders were made.

9169. Well, is there in Manchester any distinction drawn, in making up the orders, between orders in which maintenance alone is requisite as distinct from maintenance with separation?—There is no order made for maintenance without separation.

9170. Are you quite clear about that?—Quite clear according to the books.

9171. I wondered, because one of the persons who comes from your part of the world I see shakes his head?—Well, I am only going by what is brought from the magistrate's clerk's book.

9172. We have heard that since the decision we have heard of—Dodd *v.* Dodd and Harriman *v.* Harriman—that the magistrates have confined the order to maintenance only, principally in cases of desertion where maintenance was wanted but not separation?—Yes.

9173. Have you any tables which show that?—No, I have no table to show that.

9174. Can you tell us what the practice of magistrates is as to those cases?—The practice of magistrates is to grant the maintenance as well in separation cases.

9175. Yes, where separation is granted maintenance would go with it?—Yes.

9176. That I understand; but is there a practice of magistrates in Manchester now to grant orders for maintenance only?—No, it is not a general practice certainly, or it would have been brought forcibly under my notice, and as a practical man I do not see the object, except in isolated cases where the woman would continue to live with him in the same house and yet have an order for maintenance against him.

9177. Well, we have had figures?—I should think, my Lord, there would be very little happiness in the home if a maintenance order is given and they are still living together.

9178. Yes, I am not arguing it, I only want to know. May we take it, in Manchester, that where maintenance is ordered separation is ordered with it?—I do not say there are no exceptions, but as far as I know there are no exceptions.

9179. Do you think you are right about that?—I think you may take it generally that there are no maintenance orders granted alone. I do not say there are not exceptions.

9180. We are told that is not so since those cases have been called to the attention of the magistrates?—I could get that information and send it up to-morrow for you.

9181. If you please; because it may be that the returns you have combine them and do not distinguish them?—Yes.

9182. There is another point I should like to get. Is there anything in these tables which shows how many summonses were granted which were not served?—There were 799 summonses granted; and I may tell you, all applications were granted in the 3-year table; they were not refused; no application was refused.

9183. None were refused?—None were refused.

9184. Might I ask, are you quite clear about that?—Yes.

9185. Because we are told elsewhere that the magistrates frequently, when an application for a summons is made, consider it and say, "This is not worth while, " and I will not allow it"?—Well, that advice is probably given, and it will show on my figures. Take 1909—that 304 never put in an appearance after the summons was granted.

9186. No, that is not the point at present. I will come to that. You have got here Table 1—Number of Applications?—Yes.

9187. Well, take 1907—799?—Yes.

9188. If the tables are right, the number of summonses granted is exactly the same?—Certainly.

9189. That is to say that the magistrate granted the summons every time it was applied for?—Yes.

9190. Do you think that is really right?—Yes; I have got all this from the books there; it is from the court records.

9191. Do you think they only put down in the records the number of applications where the summons is granted?—It struck me, but I sent for the inspector who is in charge of the books, and he said this was so.

9192. It strikes me as being a little odd, after the evidence we have had, that the magistrates frequently persuade the persons that they should not have their summonses. However, can you tell me, assuming 799 were granted, is there anything that would show in your tables how many of those were not served?—No.

9193. The number of summonses heard was 452?—Yes.

9194. Can you tell us what has become of the difference between those granted and those heard?—I assume they got together before the hearing. There is only two or three days between the granting of the summons and the hearing, and in 1909 304 did not put in an appearance at the hearing, and I assume in the meantime they got together again.

9195. May it not mean that in many of those cases the summonses were never served—where for instance the people had absconded?—That may be so, but in a very small percentage.

9196. Are the summonses served by the police?—Yes.

9197. Is there no return showing how many were served?—No, not in this.

9198. All this shows is what were granted and what were heard, but it does not tell us how the difference is accounted for?—No.

(*The following are the tables referred to and handed in by the witness.*)

1. Number of applications for summonses for maintenance and separation orders during each of the three years ended the 31st December 1909:—

Year.	Number.
1907	799
1908	801
1909	787

2. Number of summonses granted:—

Year.	Number.
1907	799
1908	801
1909	787

3. Number of summonses heard by justices:—

Year.	Number.
1907	452
1908	471
1909	483

4. Number of (*a*) maintenance and separation, and (*b*) separation orders made:—

Number.	Year.	Number.
(*a*) 319	1907	(*b*) 2
342	1908	10
339	1909	14

5. Number of maintenance orders not taken out after being granted:—

Year.	Number.
1907	21
1908	24
1909	27

6. Number of cases where separation orders have been granted and husband and wife are living together again:—

Year.	Number.
1907	49
1908	58
1909	66

7. Number of women, where separation orders have been granted, known to be either before or since cohabiting with other men:—

Year.	Number.
1907	7
1908	6
1909	6

8. Number of men, where separation orders have been granted, known either before or since to be cohabiting with other women:—

Year.	Number.
1907	12
1908	10
1909	21

9. Number of orders cancelled on ground of adultery of wife:—

Year.	Number.
1907	5
1908	6
1909	2

9199. Then on the next page of your proof, is there an analysis of the previous returns?—Yes, the orders actually granted, my Lord.

9200. We might take 1909—353. Where is that figure in the previous table?—Number 4; 339 maintenance and separation orders and 14 for separation orders only.

9201. That is where the 353 come from?—Yes.

9202. Then, just to run that table down, 353 orders were made?—Yes.

9203. Of which 27 were not taken out?—Yes.

9204. What is the meaning of "Number in which there is no trace of subsequent history—139"?—There is no trace of the parties at all; the police cannot trace them; they have had special men, but cannot trace them anywhere.

9205. Then in 66 they have come together again?—Yes.

9206. Then 38 defendants paid in full, and 25 had paid nothing?—Yes.

9207. In 26 he pays irregularly?—Yes.

(*The following is the analytical table referred to handed in by the witness.*)

RETURN and ANALYSIS of MAINTENANCE ORDERS ISSUED in MANCHESTER in 1907, 1908, and 1909.

——	1907.	1908.	1909.
Total orders issued	321	352	353
Number of orders not taken out	21	24	27
Number in which no trace of subsequent history	179	170	139
Number in which living together again	49	58	66
Number in which one or both parties are dead	6	7	3
Number in which defendant paying order in full	12	19	38
Number in which defendant paying nothing	16	35	25
Number in which defendant paying nothing and living in adultery	12	6	12
Number in which defendant paying in full and living in adultery	—	4	4
Number in which defendant paying nothing and complainant living in adultery	7	6	6
Number in which defendant paying irregularly	14	17	26
Number in which defendant paying irregularly and living in adultery	—	—	5
Number in which orders cancelled on account of adultery of complainant	5	6	2
	321	352	353

An examination of these figures shows that of the 787 persons who were granted summonses for maintenance and separation orders in 1909, 304 did not put in an appearance upon the date fixed for the hearing of the summons, the assumption in those cases being that the differences were made up before the date of the hearing of the summonses; consequently only 483 cases were heard before the Justices. Out of the 483 cases heard 130 were dismissed, leaving 353 where maintenance and separation orders were granted. Of this number, in 27 cases the complainants failed to take out the separation orders granted, thus leaving 326 orders actually taken out. On inquiry at the addresses given and at other places 139 could not be traced, and in 66 cases where orders had been granted the man and wife were found to be living together again, thus leaving only 121, which are accounted for as shown in the foregoing table.

9208. That table explains itself. I only want to draw attention to those points. Then you say an examination of these figures shows that 787 were granted summonses for maintenance and separation orders in 1909. That is the figures taken from the top of page 2?—Yes, my Lord.

9209. Three hundred and four did not put in an appearance on the day fixed, the assumption being that the differences were made up. Is that a correct assumption? May it not be that they were never served?—I think it is a very correct assumption. Certainly we should have heard more of the parties if they had not been made up. We have had no further complaints or anything from the persons concerned.

9210. Perhaps you could give us this further information, if I might ask you to supply it. Can you show what number of summonses in 1909 were not served?—Oh, yes, I can give you that.

9211. Well, will you let us have that sent up?—Yes.

9212. Then you say consequently only 483 cases were heard?—Yes.

9213. And 130 were dismissed?—Yes.

9214. Then that leaves the figure 353, which we have already had. I do not think I need read the next part because it is shown on the tables?—Yes. I can give you the figures for the other two years. I have not printed them in detail.

9215. Which years?—1907 and 1908.

9216. I think they all appear on the tables?—No, not the details in the bottom paragraph of page 3.

9217. For the other two years?—Yes.

9218. If you please, then?—In 1907 there were 799 who were granted summonses: 347 did not put in an appearance upon the date fixed for the hearing, and only 452 cases were heard by the justices. Out of 452 in 1907, 131 were dismissed, leaving 321 where the maintenance order was granted. Of the 321, 21 persons did not take out the orders, leaving 300 orders actually taken out; and the figures for 1908 are 801, 330, 471, 119, 352, 24, 328 respectively.

9219. The rest of it the tables show, except the point I want?—Yes.

9220. Then could you give us the number of summonses granted but not served for those three years?—Yes; and I understand also where maintenance orders were granted only, you want.

9221. If you please—in each of the three years?—Yes.

9222. You, I think, consider that the present jurisdiction of the magistrates is sufficient?—I do.

9223. And you do not think it desirable to extend that jurisdiction to other courts?—I do not.

9224. I should like to ask you, as a matter of your experience, would you think it desirable that the magistrates should be required to make the orders for separation limited in time in the first instance?—Yes, I think that would be beneficial. Of course, in practice now they make the orders, but they try all they possibly can to get the people together, and they do frequently.

9235. Do you think it would tend in that direction if the order were limited?—Yes, there would be no objection, and I think it might help if it was limited in the first instance.

9226. What length of time do you think would be right?—I think if you limit it, it should be a short limit, so that they could be got together early.

9227. It is suggested that if a six months' limit is put it might keep them at arms' length for that six months?—I think six months is rather a long time; if you are going to get them together, the sooner the better.

9228. Three months, perhaps?—I think three months would be long enough.

9229. Would you add the right to restore the summons then if necessary?—I think the magistrate should have power to extend the time without a fresh summons.

9230. On application?—Yes.

9231. Would you tell me whether in Manchester the order is made for payment to the court or to the party?—To the party.

9232. Would you suggest any change there?—Well, of course, I do think in cases (it is very unpleasant to receive monies) if that part of the Act was carried out, the magistrates have power to order the payment to an officer of the court. They have that power now, but it is not exercised to any extent.

9233. They have not that power in affiliation cases, have they?—No, I am speaking now of——

9234. But would you suggest that that power should be given in affiliation cases?—I do, because we all know when they get together it leads to abuse.

9235. I have a letter on that subject this morning. You think that would be a useful remedy?—I do.

9236. You have already said you think the jurisdiction is sufficient, and you think the Act of 1895 meets the requirements of the class of persons with whom it was intended to deal?—I do, my Lord.

9237. Now I turn to another point. Do you consider it would be desirable to establish any local court, or assize court, or a judge coming down from London to take cases of divorce in which persons could not afford to come to London?—I do not know; I think it would be a mistake.

9238. Would you give the reasons you have for that?—Well, I do not think facilities for divorce should be extended in any way. I think there are quite ample facilities, with the exception that I have put on page 5—the fourth paragraph: "If it were considered necessary "or desirable to make some change to enable poor "persons to obtain divorce, it could best be accom- "plished by authorising some public authority to make "inquiries into the circumstances and genuineness of "the application and report to the divorce court, who "could then in their discretion provide the necessary "means to enable the persons concerned to come before "the court. I am of opinion that it would be very "undesirable to have two classes of courts, as poorer "persons would resent having to take their grievances "before an inferior court, whilst other persons would "appeal for redress to a higher court."

9239. You say the court shall provide the expense?—Yes.

9240. How do you suggest that should be raised; the court has no funds at all?—No, but anyone dealing with criminal matters knows that persons are assisted now in criminal matters. If a person steals a loaf, or anything of that kind, the law is put in motion, and sometimes it may take 10*l.* or 30*l.* to prosecute that person right through, and surely if it was thought a hardship in cases of immortality, the Crown could extend some assistance to poor persons.

9241. You would be in favour of the national funds being used sufficiently to provide means to carry the case through?—For poor persons, but only on proper inquiries. I do not say that the police should be the persons to make the inquiries; that would be for the Crown to decide who should make inquiries. But my suggestion is that any person not able to pay who wanted a divorce should send up their evidence to London, or wherever the court was; those papers would be sent down to the police authority, or any authority that would make the inquiries, and then report should be made after proper inquiry as to whether that was a case for assistance, I think they ought to have it.

9242. I said the national funds; do you mean out of the rates?—Yes.

9243. Now, I should like to ask you, as you have stated this paragraph, on what grounds you think the poorer people would resent taking their grievances before another court?—In the provinces we hear a lot about one law for the rich and another for the poor, and if there were two courts, that would be practically confirming that feeling in the country.

9244. Well, the poor people in a large number of cases take their cases for workmen's compensation before the county court; they do not resent that?—Well, the county courts are not a popular institution in the provinces by any means. I do not say law is not properly administered there; I have nothing against them, but it is not a popular court.

9245. But why do you say they would resent going to the county court for workmen's compensation, which they do not resent. Poor people go to the county court for everything practically except divorce cases. Why do you say they would resent going to those courts?—Well, that is my opinion.

9246. I quite understand, but I should like to know the grounds of it?—Well, the county court, whether it is right or not, is looked upon practically as a debtors' court.

9247. May I suggest it is not looked upon in that light for compensation cases, which is almost the largest class of work done?—Well, I do not think it is a proper court for divorce cases.

9248. Perhaps we had better go back to page 4. I note that the procedure in the "summary jurisdiction "is cheap, simple, and expeditious, and is fairly well "understood"?—Yes.

9249. That is quite clear; "and the magistrates "hear the cases properly with good local knowledge"?—Yes.

9250. Then the next part of your proof is dealing with what leads to the coming for separation and maintenance orders, as I understand. Chiefly, you say, assault, drunkenness, or desertion. Those are the main causes?—Yes.

9251. Of those cases, is there any proportion coming within your knowledge in which divorce would be a proper method of redress?—No. I may say during the whole of these inquiries there has been only six cases where men who have made the inquiries have been told the parties would like a divorce. The whole of the inquiries extending over these three years—only six where they said they wanted a divorce.

9252. You mean stated in court?—No, stated to the officers.

9253. And your proposal for dealing with those six cases would be to provide means for their coming to the London court?—Yes.

9254. (*Sir Lewis Dibdin.*) Six cases out of how many cases. Is that 321 plus 352 plus 353?—Yes.

9255. (*Chairman.*) You find the standard of morality among the poorer respectable class is as good as in other classes?—Yes.

9256. Are you dealing only with the class of cases that actually get before the magistrates?—Yes.

9257. You think that marriage is now entered into among those people with the knowledge that it is indissoluble except for grave and material reasons, and therefore maintains a good moral tone?—I do. I think the respectable working classes are quite alive to the seriousness of marriage.

9258. Would you be averse to giving any extension to those reasons, provided they are grave and serious?—Oh, yes.

9259. Take the case of insanity, for instance?—Well, I state there, where it is proved by unquestionable authority that the insanity is permanent, then I think they ought to be relieved.

9260. I see we come to that further on. You are generally in favour of the view that facilities for divorce might encourage laxity of marriage and weaken the marriage tie?—Yes.

9261. Do you think it would be so if the divorce rules were confined to grave and serious causes though they might be somewhat beyond the present causes?—No; but if you make divorce cheap there well be more people availing themselves of it.

9262. But would that be a disadvantage if they require it?—Yes, it would.

9263. Why?—Well, because you find there are in practice a lot of people who get rather tired sometimes, and they do not get on very well together, and if there is an easy means of getting separated they will avail themselves of it.

9264. And you have already stated there are a few cases only in which you think there has been a demand for divorce?—Yes.

9265. Do you consider the cost at present of obtaining a divorce, except in certain cases, leads to unlawful connections?—I do not.

9266. With regard to changes of ground. Do you express any view with regard to any improvement or alteration in the grounds of divorce?—I do not.

9267. You do not think it should be granted for mere desertion?—No.

9268. Let me ask you upon that: have you cases in Manchester in which the people are found to have disappeared?—There are a number of cases where they disappear—a large number.

9269. That is why I wanted to get a return from you of those summonses which are not served?—Yes.

9270. What becomes of those persons, as far as you know?—If a man absconds you have to do the best you can for the family with some institution. If the woman is not able to earn a living, or her family, then some institution has to help, and if not she applies to the Poor Law.

9271. Do you find in Manchester that the husbands who are proceeded against disappear to the Colonies or America?—I do not think they go to the Colonies very much, but they do abscond to other towns.

9272. And become untraceable?—Some of them do. Of course we have a number we are never able to trace.

9273. Have you any notion what number that is?—No. I have a list of the number of grants last year. That would not quite answer it.

9274. Can you give us the number of warrants for each of the three years?—Yes, my Lord, the number of warrants issued in 1907, 156; warrants issued in 1908, 212; warrants issued in 1909, 185. Number of warrants executed in 1907, 116; number of warrants executed in 1908, 154; warrants executed in 1909, 142. That leaves 43 unexecuted in 1909 only.

9275. How many in the other two years?—154 executed; that is 58 unexecuted; and 40 unexecuted in 1907.

9276. As far as you can gather, what has become of those 40 or 50 per annum where the warrants have not been executed?—They have absconded and we have no trace of them; I could not say what has become of them.

9277. Would you be against giving a divorce if those people are not traceable or heard of for five or six years?—I should.

9278. On what grounds?—Well, I do not think because a man absconds there should be a divorce granted.

The following table was referred to and handed in by the witness:—

City of Manchester.
Warrants for Wife's Maintenance Arrears.

Year.	Number of Warrants issued.	Number of Warrants executed.	Imprisonment.			
			3Months.	2Months.	1 Month.	14 Days.
1907	156	116	7	16	34	1
1908	212	154	6	22	56	3
1909	185	142	8	20	55	3

Of the warrants executed, 18 were on those who had been committed to prison more than once during the three years.

16th March 1910.

9279. Then with regard to lunacy, what do you say about that?—I should say if it was permanent, after a proper examination, that they should have the power of getting a divorce.

9280. If it was permanent?—Yes.

9281. After it was fairly established by proper lapse of time and certificates?—Yes.

9282. Then in the last sentence of the paragraph on which I am asking you, dealing with the relation of the two sexes—putting men and women on the same footing—is that paragraph directed to that? You say: "I do not consider that the present great cost of "obtaining a divorce, except in very special cases, "leads to unlawful connections being formed amongst "the working classes. As previously stated such "connections are regarded as a disgrace, and persons "who enter into them usually try to pass as legally "married in order to avoid the disrespect of their "neighbours. I do not agree that divorce should be "granted for mere desertion, drunkenness, or lunacy, "without the lunacy was certified on unquestionable "authority to be permanent; nor do I consider it "desirable that divorce should be granted for simple "adultery if there were no aggravating circumstances "or other matrimonal offence." It is so with regard to the wife, simply for adultery?—Yes.

9283. Then that applies to the converse case?—No.

9284. You do not think they should be equal?—I do not think a woman should be allowed to get a divorce for simple adultery without some aggravating circumstance.

9285. You think the present system of separation orders works satisfactorily, but you would prefer all cases to be tried before a stipendiary magistrate?—I do.

9286. Why is that?—Well, the stipendiary magistrate is a man well trained in the law, and you get a more consistent policy where you have got a stipendiary magistrate.

9287. Then I think your return shows a number of cases in which the parties have resumed life together again?—Yes.

9288. The last point I want to ask you about is with regard to the publication of divorce reports, or matrimonial cases of any kind?—I think they ought to be published with the reservation I have put in my last paragraph: "I consider it very undesirable that details "should be published in the press of divorce and "matrimonal causes. Newspapers are now read "by everyone, including children and young persons, "and the effect upon them must be very injurious. At "the same time the fact of publicity has a deterrent "effect upon people belonging to a respectable class, "and the association as an interested guilty party "in a divorce case is regarded properly as a dis-"grace. The deterrent effect could be maintained "by the publication of an official list of judgments, "orders, &c."

9289. You, as chief constable, have a pretty good idea of the state of things in the great city of Manchester?—Yes.

9290. What is the ground on which you have formed the opinion, then, that the particulars of these cases ought not to be published?—I think, if your Lordship were to read the Sunday papers in Manchester, you would come to the opinion that it was not a desirable thing to have these things published week after week.

9291. They are published to a great extent?—They are, and they go as near the line as it is possible to do in publishing a newspaper.

9292. More especially in the Sunday papers?—Yes.

9293. And you regard that, from what you say, as very bad reading for the public?—It is very bad reading, and it has a very bad effect on the community.

9294. Have you any practical experience from which you can say you have noticed those bad effects?—Only through cases that come up. I have no particular case, only what is reported to me as chief constable, that it has a bad effect; not only cases of this class, but

publication of crime; we frequently have cases of that kind.

9295. You think it has a bad effect on the public?—Yes.

9296. Especially the young people?—Yes.

(*Chairman.*) I think that is all.

(*Witness.*) I should just like to say on that point, we have communicated with all the chief constables in England and Wales, and they are unanimous on that point, that reports of divorce proceedings ought to be prohibited.

9297. (*Chairman.*) That is highly important. Perhaps you will supplement that statement by telling me how many there are?—I have 98 chief constables in the association, and, with one exception, they are all in favour of prohibition of publication.

9298. Are they all towns?—They are all cities and boroughs. It does not embrace the county authority.

(*Chairman.*) Well, that is very strong and very important evidence, and I thank you for it.

9299. (*Mr. Brierley.*) Just one question about your table on page 1, with regard to the number of applications for summonses for maintenance and separation. Is any record whatever kept of the applications made for these summonses?—Yes, I have got these from the inspector.

9300. But just pardon me. There is a record made of the summonses granted, of course?—Yes.

9301. But is there any record whatever kept of the number of applications made for summonses?—Well, of course, I cannot say exactly.

9302. No. 1 and No. 2 exactly correspond?—Yes.

9303. I suggest to you, that the reason of that is that no record whatever is kept of the number of applications made?—I cannot say. I have got these from the book——

9304. I suggest to you, applications are made practically every day in the year, of which no record is kept unless the application is granted?—Yes, well, of course.

9305. That, I think, accounts for No. 1 and No. 2 exactly corresponding?—Yes.

9306. A woman comes and makes an application, and if it is refused no record whatever is kept of the matter?—No.

9307. If the summons is granted?—My answer to that is this, that we only take it from the record. If there is no record, then, of course, I do not know.

9308. With regard to maintenance and separation: does the return distinguish at all between the cases in which maintenance only is granted, and those in which maintenance and separation are granted?—Yes, the materials supplied are exactly——

9309. But is there any distinction in the returns between cases in which maintenance only is granted and cases in which both are granted? I mean the returns made to you?—Yes, I have had cases where the order has been made.

9310. There is just one thing about the practice at Manchester in the police court that I should like to ask you. Is it not a fact that these cases as a general rule are heard by the city justices?—A good many.

9311. And in very few instances indeed by the stipendiary magistrate?—Yes; of course they are divided I do not mean equally divided.

9312. Are not these heard by the city justices?—Well, a good many are. Of course I know the majority are heard by them.

9313. Nearly all?—Yes.

9314. Then you say in your proof that you think the working classes would resent having to take their grievances before an inferior court. That is an opinion formed from your wide experience of the poorer classes?—Yes.

9315. Have you had any expression of opinion from any body of workmen?—No, I have not had any expression from them beyond this, it is hearsay evidence; I was told by a solicitor of the Poor Law Department that they had had two meetings of working-men——

(*Mr. Brierley.*) I believe we shall have him.

9316. (*Sir Lewis Dibdin.*) Well, just finish?—And that they had expressed a decided objection to having to go to local courts.

(*Chairman.*) Who is it made that statement?

(*Mr. Brierley.*) That is Mr. Wrigley.

(*The Witness.*) Mr. Oppenheim made the statement to me—a solicitor in Manchester.

9317. (*Mr. Brierley.*) Mr. Wrigley is the secretary of that society?—Yes.

(*Chairman.*) He is coming as a witness.

9318. (*Mr. Brierley.*) I only wanted to know whether since this Commission was appointed, or before, you had had any expression of opinion at all from the working classes brought before you?—No, I have not.

9319. (*Sir Lewis Dibdin.*) You said you are the president of the Chief Constables' Association. You are sent here to give evidence on their behalf, as well as on your own?—No. We were asked to give evidence on behalf of this Chief Constables' Association, and we are representing the association here, but we have had no meeting of the association.

9320. Are you able to tell us at all how far your views that you put before us now are shared by other members of the association?—They are shared entirely by the members of the committee of the association, and the points I have mentioned are shared by the association as a whole—the four points I have mentioned.

9321. (*Chairman.*) Which four?—About the applications for separation orders. There is only one that suggests that applications are made principally on the ground of adultery—all the others are agreed that applications principally are made on the ground of cruelty, and other causes apart from adultery. Then they are all agreed that the publication of divorce proceedings should be suppressed.

9322 (*Sir Lewis Dibdin.*) That is two. What are the other two?—Then they are agreed that the county court is not a proper court for the trial of divorce cases.

9323. And the fourth?—And the fourth is that the present system of trying separation and maintenance orders is in every way satisfactory.

9324. (*Chairman.*) Might I put one question. I have a reason for asking it from some other proofs we are having. Are you assured they are agreed about the county court question? The reason is we have some different views that are coming——

9325. (*Sir Lewis Dibdin.*) I think you said the committee were unanimous?—Yes; and the association as a majority are agreed on the four points I have mentioned.

9326. The majority of the association and the whole of the committee?—Yes.

9327. Now I wanted to ask you a question about your objection to the county courts. I think you put it in this way, that you are of opinion that the poor would resent having to take their grievances before an inferior court while other persons would apply for redress to a higher court?—Yes.

9328. That is your point?—Yes.

9329. You were asked something about workmen's compensation cases. Is it not the fact that in workmen's compensation everybody has to go to the county court?—Yes.

9330. So that the point of there being one law for the poor and another for the rich does not apply in workmen's compensation, does it?—No, it does not.

9331. But it would apply in divorce if jurisdiction were extended so that the poor could go to the county court for divorce, but the rich would go to London to the high court?—Yes.

9332. Would not that be an entirely new departure in this sense? Is there any jurisdiction at all, or any matter at all in England at present where there is one court provided for poor people and another court provided in the same matter for rich people?—I do not know of any exception, except that they can go to a higher court for damages; they can only claim damages in the county court up to a certain amount.

9333. Let me make my point clear. If a man has got a small sum in dispute he goes to a county court?—Yes.

9334. Whether that man is a rich man or a poor man he goes to the county court?—Yes; the court is just the same, but there are exceptions as to the amount.

9335. That depends on the amount of his claim?—Yes.

9336. Not upon the amount of his riches or poverty?—No.

9337. And I suppose a marriage is just as important, whether it be the marriage of rich people or the marriage of poor people?—Certainly.

9338. (*Mrs. Tennant.*) You said to the Chairman you would not grant divorce for five or six years' desertion. Is there any period of desertion after which you would grant divorce?—No; not without it was almost proved beyond a doubt that the husband was not living.

9339. Not living?—Yes.

9340. You distinguish between desertion and lunacy?—Yes.

9341. The desertion cannot in any way be said to be a visitation of God, but the lunacy might?—Certainly.

9342. Yet you would grant divorce for lunacy, though you would not for desertion so long as the husband or wife is alive?—No. I say there would have to be unquestionable authority that the lunacy was permanent.

9343. But the lunatic is still alive?—Yes.

9344. But so long as the deserter is alive you would not grant divorce?—No.

9345. Then on what ground do you distinguish between lunacy and desertion?—You have a great distinction, I think. You have it that the lunacy is permanent, and that the husband is not likely to recover; and in the other case the man who has deserted his wife may turn up at any time.

9346. But he does constantly declare his intention never to turn up again?—No, but he may come along.

9347. Even though he of his own free act declare his intention never to return, as husbands do, from the Colonies, yet you would not grant his wife a divorce though you would grant a divorce for lunacy?—Yes, because you have ample evidence there that there is no possibility of the husband returning—in lunacy.

9348. Is the evidence always ample in a case of lunacy?—Well, I put it on those grounds—that you must have undeniable authority that the lunacy is permanent. I put it as strongly as that, that you must have authority that this is permanent, and that the person is not likely to recover. That is the ground I put it on.

9349. But you may also have as strong evidence that the husband is not likely to return?—No, you could not have that evidence.

9350. Not the husband's own word?—Say, if a period of 15 or 20 years has elapsed, and if the man deserted his wife, you could not get evidence to say he is not likely to return. I do not see how you could possibly get that evidence.

9351. Not likely even?—No.

9352. You would exclude as likely evidence his absence for 20 years accompanied by his own statement of his intention not to return?—No, I do not see the case is on all fours, but that is only my opinion.

9353. I am anxious to ascertain why you do not grant divorce in a case where a man deserts of his own free act, if you would in lunacy, about which a doctor can perhaps only say, "To the best of my belief "this man (or this woman) will not recover"?—My answer is that you have got proof in the one case and you have no evidence in the other but what the man might come back at any time. That is my answer.

9354. Then you say the present system of separation orders works satisfactorily?—Yes.

9355. In your table on page 3 there is given the number of parties living together again as 66, and the number in which the defendant is paying the order in full is given as 38?—Yes.

9356. I suppose those can be said to be instances in which it is working satisfactorily, though I should be glad to know whether in your experience cases of reconciliation sometimes end unsatisfactorily, in so far as the parties separate again and then come for a second separation order?—Yes, they frequently get together and then come a second time.

9357. You cannot say that is quite satisfactory, if they separate and come a second time?—What I mean by satisfactory is that it is as satisfactory a system as it is possible to inaugurate in the class of persons you are dealing with. One would wish there should be no separations, but it is as good as one can devise.

9358. There is in your table "139 in which there is "no trace of a subsequent history"?—Yes.

9359. Have you been able to form any conclusion as to what does happen in that number?—Well, even after the separation orders are granted in some of those cases, though you cannot trace them, the man and wife will be living together again. They frequently come together, and get on what they call new ground. They are working people; there is nothing to keep them in a particular place, and they go away and start life together on new ground, and get together in that way.

9360. But on what basis do you assume that 139 or any considerable portion have done that?—I do not say a considerable proportion have. I say some would.

9361. Have you any means of getting at the number of those that do?—No, only experience of human nature and knowing what does take place. I have no figures. I should not put it down there as "no trace" if I had figures; but I think you may assume that a number of those 139 are living together in another town.

9362. I suppose some of the numbers in the other tables may contribute to that number; for instance, where the defendant is paying nothing, and living in adultery. Your figures for 1909 appear to be 12. You have no more reason, I suppose, for assuming that the 139 is satisfactory than that it is unsatisfactory?—Oh, no; but of course with regard to the 12 you speak about we have actual proofs.

9363. Those figures are on a good basis?—Yes.

9364. (*Lady Frances Balfour.*) You said these separation orders, in the opinion of those you represent, are asked for on the ground of desertion and cruelty?—Yes, principally.

9365. Not on the ground of adultery?—No.

9366. Would it be of any use to apply for them on the ground of adultery? Would they be granted on the ground of adultery alone?—No.

9367. Because they could not be granted on that ground?—Yes.

9368. Therefore it is no evidence that they would not be applied for if it was granted on that ground?—I do not know that.

9369. Then you would not make it equal; you would grant divorce against a woman for a single act of adultery?—I have not said so.

9370. But you said you would not make it equal as between men and women?—I have not said so up to now.

9371. I thought you said you required an aggravating circumstance?—No; I said I would not be in favour of a women getting a divorce for a single act of adultery or a simple act of——

9372. Nor would you be in favour of a man getting a divorce for a single act?—I would rather not touch on that at all. I can give my reasons why I should not be in favour of a woman.

9373. I quite understand you think a woman should not get it for a single act of adultery on the part of her husband?—Well, my reason is this. There are many times that a man might go astray (I do not approve of their going astray—do not misunderstand me), but talking as a public official—there are a number of cases where a man might—we will say accidentally—go with a woman, and I do not think a woman should

on account of that fact be able to get a divorce; but if there are any aggravating circumstances—keeping a woman, or keeping two houses, or taking home a venereal disease, or anything of that kind—I think then she should be at liberty to get a divorce, because I think there is cruelty and a great indignity to the woman.

9374. But you think it would be justifiable for a man to be able to get a divorce from his wife for a single act on her part?—I do not think the cases are on all fours at all.

9375. In fact, you do not think it is an equal case as between men and women?—I do not.

9376. (*The Archbishop of York.*) With regard to applications for separation orders. It is true, of course, that mere adultery would not be a ground for applying for an order; but would you say from your experience of these cases that adultery, if it had existed, would be alleged as a circumstance of the unsatisfactory marriage?—Yes.

9377. But you would say that adultery is very seldom brought in?—Yes; and the number of orders are very few that are cancelled on the ground of adultery.

9378. Yes, I see that. Then with regard to the interesting point you made that during the last six years your inquiry officers had only come across six cases in which separated persons said they would like a divorce?—Yes.

9379. Who conducted these inquiries on your behalf?—Special officers in the five divisions of the Manchester police.

9380. These were officers——?—Who were specially told off.

9381. With great experience?—Yes.

9382. Officers who are accustomed to make statements deliberately and after full inquiry?—Yes, that is so.

9383. With regard to desertion in the case where a husband has disappeared. Would you say from your experience in Manchester that you think there is any large number of deserted wives who are driven to immoral relations?—There are not. That is not my experience. They are not driven.

9384. With regard to cases of prostitution that come before you as a chief constable: would you say any considerable number of these were separated or deserted wives?—No; my experience of prostitutes is that they are not this class of persons who apply for separation orders. We do not find prostitutes come from that class.

9385. Then it would not be true to say, according to your experience, that the effect of either separation orders or desertion was to drive a large class of respectable women on the streets?—No; I do not say there are not isolated cases of that kind; but taking it as a general rule, no.

9386. With regard to the ability of such wives to maintain themselves; would you say in a large number of instances parents or relations supported them with kindness and neighbourliness?—That does happen. If the husband deserts the wife, the friends or relations try to support as far as possible, and as a last resort they have to apply to the Poor Law.

9387. But you would say it is an exaggeration to say that because a woman is deserted by her husband that would indicate the probability that she would establish immoral relations with anybody else?—I should say so.

9388. With regard to your point as to a distinction as between lunacy and desertion as a ground for divorce, about which Mrs. Tennant was asking you. Would you say there is this difference: that in the case of allowing desertion to be a ground for divorce, there was considerable opportunity for connivance between the parties?—Oh, that is so.

9389. Whereas in the case of lunacy there would be no such opportunity?—No.

9390. Nobody would become a lunatic in order to escape from his wife?—I should not think so.

9391. But he might desert?—Yes.

9392. About publication; have you as chief constable any experience about whether or not immoral relations are entered into between the sexes in the case of very young persons?—Yes, of course you have that in a large centre very often.

9393. Would you say it was increasing?—I should not say so.

9394. But very prevalent?—Yes.

9395. Would you say from your experience you would think it possible that the reading of all these details of sexual relations had a very bad effect on the morals of very young persons?—I think there is no getting away from that fact at all.

9396. One last question on the general point. You were giving testimony which, if I may say so, entirely bears out my experience as to the great stability of the homes of the ordinary working folks. Would you say that is largely due to their conviction when they marry that it is for better or for worse?—My experience of the working class is, that they do not recognise immorality when they know of it in any shape or form. I could give you plenty of instances where a working woman is living in adultery with a man, and she is practically drummed out of the neighbourhood; she is not allowed to live in the neighbourhood; they make it too warm for her.

9397. I want to just make it clear. Is the reason you deplore any extension either of the grounds or facilities of divorce that you think that would unsettle this very high standard in the working classes?—It would; I am certain of that. If you will refer to page 2, you will find in 1907 only five separation orders were cancelled on the ground of adultery; 6 in 1908, and only 2 in 1909. You can take it that the husband who is paying for the maintenance of his wife would be on the look-out, and if there was any chance of coming to court to get that order cancelled he would come; and I think that is a good proof of the standard of morality of the separated women.

9398. That does not show it as to the husband, of course?—No; that would not apply, of course.

9399. (*Mr. Burt.*) I take it from your evidence that you recognise that the cost of application to the divorce court is practically prohibitive in the case of the poor classes?—Yes—in the very poor classes—yes.

9400. And you make suggestions with a view of modifying or meeting cases of that kind, but you are against transferring the jurisdiction of these cases to the county court?—Yes.

9401. You stated that you found the county courts are unpopular. Do you mean with the workpeople generally?—What I said was that they were looked upon more like debtors' courts.

9402. His Lordship put to you certain questions bearing upon compensation cases?—Yes.

9403. You would not say that the workpeople resent or demur to compensation cases going to the county courts?—No, I do not know that they do; I have no proof of that.

9404. But you think they are generally unpopular?—Well, I do, yes.

9405. You drew a distinction between cases of desertion and cases of lunacy?—Yes.

9406. And you said in cases of permanent lunacy you would grant divorces?—Yes.

9407. On the ground, as I understood it, that the husband who deserts his wife may return?—Yes.

9408. Is not there also equal uncertainty, or at least a great deal of uncertainty, with regard to lunacy?—You know probably (I think it is a matter of general knowledge) that even after years you sometimes have cures, and people are restored to their sanity after an interval of many years?—Yes.

9409. How do you find out whether a case is permanent lunacy?—Well, I cannot tell you how they should find out, but I say the answer to that is that you should have proper certificates to say there is no possibility of the husband ever getting better. That is what I say.

9410. It should be a matter of medical opinion?—Yes.

9411. But doctors differ, do they not?—Well, I cannot put it higher than that.

9412. (*Chairman.*) Just two or three questions. What is the number of your committee?—Ten.

9413. They are, I think you told us, in favour of not giving the county court jurisdiction?—Yes.

9414. But with regard to the association, you said the majority were not in favour of doing so?—Yes.

9415. Would you tell us what proportion—roughly?—Yes, I can tell. There are only 54 that answered that question (we sent out questions) and 32 are against and 22 in favour of a change.

9416. Thirty-two are against giving the county court jurisdiction?—Yes.

9417. And 22 in favour of it?—Yes.

9418. How many did you send to altogether—the whole 98?—Yes; but the others have not answered that question.

9419. They have left it blank?—Yes.

9420. But they have all answered the question with regard to publication?—Yes.

9421. That gives us some notion of the division of opinion. Then I notice one thing on your figures on page 3 which I think has not been sufficiently dealt with. But first, on those figures we have 353 orders issued in 1909?—Yes.

9422. In which 66 in the end resulted in the parties living together?—Yes.

9423. That is not quite 20 per cent., though that is sufficiently near?—Yes.

9424. I see below some figures I did not quite notice before. "Number in which the defendant is paying "nothing and living in adultery, 12. Number in "which the defendant is paying in full and living in "adultery, 4. Number in which the defendant is "paying nothing and complainant living in adultery, 6. "Number in which defendant paying irregularly and "living in adultery, 5. Number in which orders can-"celled on account of adultery of complainant, 2." That is 27 altogether living in adultery with the orders still existing?—Yes.

9425. You said it was usually the case in Manchester if the parties were living in adultery the parties got drummed out?—In respectable neighbourhoods.

9426. What about these 27, are they still living in adultery?—Yes.

9427. Well, the drumming process does not seem to have been applied to them?—I said respectable neighbourhoods. These are not all respectable neighbourhoods. Some of these may be in common lodging-houses.

9428. But I dare say these figures show that there are possibly a great many people in less respectable neighbourhoods living in adultery without being drummed out?—Yes.

9429. Then, take those cases we have here—this 1907. Would you say it is satisfactory that those people should go on living in adultery under these orders of separation, instead of getting divorce in the first instance, or divorce because of the adultery. It is the 12 and 4 and 6 and 5?——

(*Sir Lewis Dibdin.*) It does not mean 27 pairs of people necessarily.

(*Chairman.*) It means 27 defendants. It means 54 people. "Number in which the defendant is living "in adultery and paying nothing, 12"—that is 12 pairs.

(*Witness.*) There are 21 men in 1909 and two women living in adultery. They are summed up at the bottom of page 2. There are 21 men living in adultery and two women.

9430. (*Chairman.*) That is where the order has been cancelled; but, in addition to that, you have the figure on the next page, "Number in which the defendant is "paying nothing and complainant living in adultery." That is 6?—It is only 2 in 1909.

9431. No. 2 in 1909 is where the order is cancelled. The number living in adultery when the order is not cancelled is on the next page, "Number in which the "defendant is paying nothing and complainant is living "in adultery." That is 6?—Yes.

9432. That shows that there are a number of people living in adultery after these orders?—There are 27; that is 21 men living in adultery out of 787 orders applied for.

9433. I quite understand, but all I meant to ask was this: would you regard it as satisfactory that those people should be allowed to go on living in adultery; for instance, a defendant paying in full and living in adultery instead of allowing the wife to obtain a divorce?—My answer is that no divorce proceedings would rectify that state of things.

9434. Why not? Take the case of a defendant paying nothing and living in adultery, 12?—That shows that that is a worthless man. If he was living in adultery you could make the man pay; the magistrate would bring him up to the scratch.

9435. But why in those 12 cases should not the complainant be entitled to a decree of divorce, when the husband has paid nothing and has been living in adultery?—I should say the man is a thoroughly worthless fellow.

9436. Is not that all the more reason for the wife being able to get rid of him?—She could get rid of him now.

9437. No, not unless he has committed an act of cruelty?—The very fact of the order shows he has been cruel to her, and that would be a justification for divorce. The law at present is there for the woman if she has the means, and if you adopt my suggestion, and give her the means——

9438. I quite follow. You meet the difficulty by providing through the rates or the national funds the means of applying to the high court?—Certainly.

9439. (*The Archbishop of York.*) Might I ask one question about the number of your association, Mr. Peacock? You say 32 were against the county court as being a proper court for divorce, and 22 in favour. Did any of those indicate any other court besides the county court?—No.

9440. They did not consider that?—No.

9441. (*Chairman.*) Would you tell us what the question put was?—Well, I did not want to refer to these papers too much. "Do you consider the present "system satisfactory?" That was the first question. "If so, on what grounds and for what reasons?" Then it goes on——

9442. The county courts, that is?—Yes, we are dealing with the courts there. "If not, then do you "suggest any amendment in the existing law?"

(*The Archbishop of York.*) We only want the point about the county courts.

9443. (*Sir Lewis Dibdin.*) Question 25, I think?—"Do you consider that the limited grounds on which "divorce is now granted, desertion, cruelty, and "adultery——"

9444. (*Chairman.*) The only question His Grace is asking you is about the county courts?—"Do you "think any advantage would accrue if maintenance "and separation orders were dealt with by the county "courts?"

9445. That is not the point?—But I have not dealt with the county courts about divorce.

9446. Then if the answer of the 22 and the 32 were whether the county courts or the magistrates' courts was best for the present orders; that is a different point?—Yes.

9447. Is there any answer as to the county courts being used for divorce cases?—No; no satisfactory evidence from the chief constables that I can put before you at all.

9448. Then we have no general expression of opinion as to the county courts taking jurisdiction in divorce?—Not on that point.

9449. Do the 98 members you have of your association include all the cities and boroughs?—No, not all.

9450. Do you know how many there are all together?—No; perhaps there would be a dozen who are not in the association.

(*Chairman.*) I ought to thank you very much, Mr. Peacock, for your evidence.

The following have been forwarded by Mr. Peacock as supplementary to his evidence:—

CITY OF MANCHESTER POLICE.

Married Women's Protection Act.

RETURN showing the Number of Maintenance Orders issued between 1st January and 31st December in each of the years shown hereunder:—

Year.	Number issued.
1907	1
1908	None
1909	4
Total	5

Note.—In each instance without the grant of a separation order.

CITY OF MANCHESTER POLICE.

Married Women's Protection Act.

RETURN showing the Number of Summonses not served between 1st January and 31st December in each of the years shown hereunder:—

Year.	Number issued.
1907	12
1908	12
1909	22
Total	46

Note.—These figures were included in the column "Not proceeded with" in the Return previously submitted and headed "Number of Summonses granted," &c.

Mr. THOMAS MIDDLETON HARRIS called and examined.

9451. (*Chairman.*) Are you chief constable of the city of Wakefield?—I am, my Lord.

9452. Was your name suggested by the secretary of your association?—It was.

9453. Is that the same association that Mr. Peacock belongs to?—I am the vice-president of it.

9454. Have you held the position of chief constable of the city of Wakefield for the past 21 years?—I have.

9455. And had 37 years' police experience in the counties of Cheshire, Lancaster, and Yorks?—Yes, in every rank of the service.

9456. May I take it the number of applications, and the number of orders made in the city of Wakefield for the years specified on the first page of your proof are set out?—Yes.

9457. I will not read them, but it will be put in as part of your evidence by the shorthand writer. Are you able to tell us whether in Wakefield there is a difference now between the order for maintenance and the order that includes an order for separation?—There is.

9458. I rather gathered from Mr. Peacock that that was not so in Manchester; but it is so in Wakefield?—It is so in Wakefield.

9459. Is that since the decision that called attention to the point?—Since the decision of Harriman *v.* Harriman was given.

9460. Do you show at all in these tables the distinction between the orders for maintenance and the orders for separation?—Oh, yes. If you will notice, the totals for the three years for desertion alone——

9461. That is 19?—Oh, I was giving you the decisions now, my Lord. You want the applications, do you?

9462. Well, do the orders table show how many cases in which maintenance orders alone were made as distinct from the orders which included separation?—Yes.

9463. Where is that?—In the table set out for desertion, cruelty, and neglect, which gives in each year the different numbers that were made, and you will gather in the three years 1907, 1908, and 1909 the total for desertion was only 19, whereas during the same period for cruelty there were 25.

9464. But that does not tell us whether the desertion orders were simply for maintenance or whether there was included in the order an order that the parties should live separate. You have not given us that?—No, my Lord, they are not given separately.

The following is the table referred to and put in by the witness.

The number of applications under the Summary Jurisdiction (Married Women) Act, 1895, for the city of Wakefield, is as follows:—

——	1907.	1908.	1909.	Total.
Desertion	13	11	8	32
Cruelty	16	9	23	48
Neglect	1	—	1	2
Habitual drunkard	—	—	—	—
Aggravated assault	—	—	—	—
				82

There were no applications under the Licensing Act, 1902.

The numbers of orders are as follows:—

——	1907.	1908.	1909.	Total.
Desertion	9	6	4	19
Cruelty	—	5	12	25
Neglect	1	—	—	1
Habitual drunkard	—	—	—	—
Aggravated assault	—	—	—	—
				45

Six of the applications were dismissed.

9465. Now, at the top of the next page of your proof, you say: "Since then, in cases of desertion, "orders for maintenance only have been made." May I take it, therefore, that the 19 orders mentioned there are only for maintenance?—Yes, the 19 are for maintenance alone, without separation.

9466. And the cruelty would be combined?—The remainder.

9467. Is the maintenance in your city paid direct to the wife usually?—Usually, but in some cases it has been paid through an officer of the court, and the officer of the court nominated has been the Chief Constable, and it has been paid through him in exceptional and very distressful cases, and with very satisfactory results—I should say from the wives' point of view.

9468. It is better to have it paid through some officer, I gather from what you say?—Yes.

9469. Before the hearing, 31 of the applications have been withdrawn, I see?—Well, my Lord, probably I should qualify that in this sense, that frequently applicants come before the court and they may or may not have a solicitor on each side, and with the consent of the justices, or probably at the suggestion of the justices, they might consult together before the rising of the court, with the result that very often the case is adjourned for a week or a fortnight to see if they can settle their difficulties. Then, again, we have a system

in Yorkshire where the Police Court Missionary does very useful work in that respect. He very often is the court probation officer also, and therefore, at his own initiative or at the suggestion of somebody else, he approaches these people; and not infrequently I may say the police themselves assist; and while on this I would say I attend the police court daily personally, and 70 per cent. of these cases are told to the police before any application is made, so that probably the police, or the chief officer of police, is in a better position to know the whole details of the case before it goes into court than even the magistrates themselves.

9470. Do you mean before the application or before the order?—Not before the application for summons—I make a distinction between the two—but before the application for the order.

9471. After there has been an application, things are looked into?—Yes.

9472. Well, before the hearing, 31 applications are withdrawn?—Yes.

9473. Then I see in 29 of the cases where orders have been made—that is 29 out of 45—they have resumed cohabitation?—Yes.

9474. That is a large proportion?—Yes, '66 per cent.

9475. Is that what you mean by saying that practically 60 per cent. have become abortive?—Yes, that and other causes.

9476. I should not call it abortive if it leads to their living together again?—Well, that was from a court point of view, I take it.

9477. Then you go on to say in your proof: "In a "large proportion of the cases proceedings are in my "opinion taken more as the immediate outcome of a "quarrel or series of quarrels, and in some of the cases "orders have been made where the justices felt that "it was in the interest of both parties that they should "be parted for a time, but with the full conviction "that ultimately they would come together again." Would you suggest the justices should have the power to make an order of a temporary character?—Well, I do not like the word "time limit" my Lord. It is now in the power of the justices to adjourn a case for three months.

9478. But during that time there is no order?—But on the understanding the husband pays a certain amount to the wife, which is frequently done in our courts, and it would have pretty much the same effect as if you empowered the justices to grant separation orders for a time period; but a time period, to my mind, is rather a dangerous thing.

9479. Might it not be met by the justices having power to adjourn the application for separation, and order payment in the meantime?—Yes, in preference to the time limit.

9480. That would work out what there is power to do now, but it would vary it to that extent?—Yes. I could give reasons.

9481. Yes, please?—Well, two very painful cases came under my notice during the last year. In one instance a young wife, not more than 26, made a complaint. She came for advice as to what she was to do with her husband, who worked at a little distance away, and came home at week-ends. He did not give her quite sufficient money to make ends meet, and she had to go out working herself, although she had two small children, and she explained her position in these words:—"You know, he goes away and deserts "me occasionally for three to six months at a time, and "it always happens when I am in a certain condition. "When my trouble is over he comes back and for "a short time is kind and helpful, and then he re-"sumes cohabitation, with the result that he is hanging "round my neck several children that I shall have to "maintain, and he will probably desert me altogether "in time." That is a strong case to my mind where the time limit would work very badly.

9482. How would you meet that?—Well, have an adjournment, and if an adjournment did not meet the requirements, then I would, if he had committed adultery, grant divorce.

9483. And in the meantime make the order operative as far as payment was concerned?—Certainly.

9484. Your view is that it is not desirable that the jurisdiction of the justices as at present established should be transferred to the county court?—Decidedly I am very strong on that.

9485. You think they work their business very well?—I do.

9486. And quickly?—Yes.

9487. I take it that your view is that the real object of these proceedings is to get maintenance rather than separation?—Yes. Would it be of interest to you, my Lord, to give you what my experience has been as to what leads up very often to these cases of applications that are made for maintenance and separation?

9488. If you think it will assist us, by all means?—Well, I do not think it has been touched upon yet. My experience is that the three principal reasons are:—injudicious marriage; early marriage; getting married, as we say in the North, on the hire system. To explain that, I should make myself clear that now in a great part of the country—especially among the working classes—there are people who are always ready and willing and waiting, and impressing upon the young married people that they can furnish their house for nothing. They begin on the hire system by furnishing their house (I have known it done to even buying the ring in that way), with the result that everything in the house belongs to another party, and the husband at once begins to work with a millstone around his neck, having five shillings or six shillings a week to pay off the hire on the furniture—bedding and everything else included. Then, again, there is the rent coming in, and, finally, the young wife finds she is not able to supply the husband with the luxuries that probably he had had when he was living at home with his parents.

9489. Is that the third point?—No, I am still on the getting married on the hire system. The husband finds he is not getting as many luxuries as he did when he was living at home with his parents and he becomes dissatisfied. Then the wife, in trying to make peace in the house, finds she cannot meet her furniture payments, and the rent gets behind, and then she has the furniture people coming down and pressing her, and eventually a county court summons. That, to my mind, is where the county courts are not so popular amongst the working class people as they might have been, because they are associated with all these small debts—tally men and others recovering their debts. The county court summons comes and the wife very often hides it, and then, when the husband finds out in the course of 12 months or two years that he is hopelessly in debt, probably an assault takes place and general ill-treatment; which, in the first instance, may have been brought about by getting married without his providing in any way, and, secondly, by his finding that he is hopelessly in debt. Then, my second point is mothers-in-law, which I find very often are the means of disputes amongst newly-married people, but I would not like to go into that too much. Thirdly, I find that working-men's clubs are responsible for a considerable amount of discontent at home.

9490. Perhaps you had better explain how that operates?—Well, working-men's clubs are now so numerous, and they cater so well for working-men, that they make the place more comfortable very often than his own home. The first six or twelve months of married life he comes home and sits with the wife, and looks after the garden, or takes her out for a walk. But that very soon gets stale, and he tires of it, with the result that he finds his way to the club, and, instead of paying attention to his wife at home, he pays too much attention to the club from the minute he leaves his work till he goes to bed.

9491. Well, that is extraordinarily interesting, but I should like to ask whether your experience leads you to suggest any remedies for these causes. Would you suggest the abolition of the hire system, for instance?—I would like to make it more difficult for these people to foist their goods on the poor, unsuspecting people at an early stage in their married life.

9492. How would that be carried out?—I am afraid a policeman's brain will not carry him that far. There

would have to be something higher than that, but that is my experience.

9493. You state "causes in operation," but the thing is, where those causes are ascertained, to try and arrive at some remedy. You have nothing more to suggest on the improvident marriage and the hire system points?—No; one would like to see it done away with if one could, but as far as legislation is concerned I cannot at this moment suggest any stringent measures. I may have something in my mind, but ——

9494. With regard to the second—mothers-in-law —I am afraid——?—That is impossible.

9495. That is almost historical?—Yes.

9496. But with regard to working-men's clubs. What is the suggestion you would make with regard to that?—Only to place them on the same footing as public-houses.

9497. How would that operate to check what you describe?—They would decrease considerably to begin with, and the respectable working-man would not go to the public-house as much as he would to the club.

9498. You mean it would tend to make him stay at home?—Yes.

9499. These are causes in operation which you think lead to applications under the Summary Jurisdiction Act?—They are.

9500. I daresay drink is another cause, is it not?—Drink is always a contributing cause, but not to the same extent that some people think.

9501. You have given us a very clear view about those aspects of this matter. With regard to proceedings for actual divorce, what do you say?—On that particular point, my Lord, I want, with your permission——

9502. Do you mean before you come to divorce?—With your permission I want to amend that paragraph in my summary of evidence by deleting the whole paragraph and substituting a small one.

9503. Which one is that?—On page 4.

9504–5. Well, you need not treat this as your evidence. What we want are your considered views?—But you have before you the proof of my evidence and that appears in it, and I should like, with your permission, to withdraw it.

9506. This proof does not go on the notes in any shape or form. What we want are your considered views?—Well, I should like to explain that I want to amend that altogether by leaving it out, and to submit in place of it: "I do not consider it desirable to increase "the facilities to obtain divorce. Any steps in that "direction would, in my opinion, tend to seriously "weaken the marriage tie." And, if I might continue, I would then follow Mr. Peacock in his recommendation with regard to, if it was considered necessary at all, making divorce cheaper for the poorer classes, that it should be done out of the public funds. While on that point I might explain—going a little further than he did—that after a thorough inquiry was made in the district the complainant made her application, that, as now it is considered necessary to maintain a King's Proctor after divorce has been obtained, I think before divorce was obtained the King's Proctor, or some similar Crown official, should be enabled to collect evidence and to make inquiry, and it should be for him to determine what is or what is not a proper case to lay before the Court, and to assist materially out of the public purse; not out of the rates, as your Lordship asked the last witness, but out of the taxes.

9507. I gather, then, you think there are cases in which the poorer people cannot get their remedy without something more being done?—I do, my Lord, and I have known some very hard and distressful cases.

9508. At first you were inclined to think jurisdiction might be given to the justices?—No, I have never said that, my Lord. I said the county court.

9509. Yes, to the county courts?—Yes.

9510. But now you think it more advisable that the machinery suggested by Mr. Peacock should be adopted?—I do.

9511. To what extent are you able to say there is a demand that would require to be met in the way you mention?—Oh, it is not a large demand; it would only be a very small demand to my mind.

9512. Do you meet with many cases in which you think, if the people had the means or had them provided, they would take that remedy?—Oh, I do; and some very proper cases to.

9513. Can you give us the kind of cases that are in your mind?—Yes; a case came under my notice just three months ago where a man was keeping two establishments openly, and staying three or four nights a week at his proper home with his wife and the remainder at the other establishment; and the woman was too poor. She came to consult the police and ask for their assistance, as a great many people do in the North; the police are looked upon as the poor poople's friend in the North, and very properly too. She detailed her case, and how it stood, and wanted to know if she could have a separation order; the man was contributing sufficient to keep her and her children, paying the rent, rates and taxes, coals, gas, and everything else, The only trouble was that he was an immoral man keeping two women. To my mind that was a proper case where the woman should be entitled to go to the authority and lay her case down and ask for a divorce. As it is, it is impossible for her to do so, and she may go on living the whole of her life under those conditions.

9514. Is that a solitary case, or is it typical?—It is not a solitary case, but they are not numerous. In 37 years, as a public official, one is bound to come across a great deal of it, especially when you take a practical part in the work.

9515. Then the substance of your evidence is that there are cases of hardship in which remedies should be provided and you have suggested the form they might take?—That is my suggestion.

9516. Now, have you some suggested amendments in the separation cases?—I have, my Lord.

9517. Would you tell us what the amendments you suggest are?—Well, I suggest the Separation Act should be amended to enable people to obtain separation orders for desertion without being coupled with cruelty. That is one. Also that a woman should be able to get an order against the husband for not maintaining the wife and family.

9518. That can be done now?—Only maintenance, I think. It must be coupled with something else.

9519. No, that is not so?—Perhaps I made myself misunderstood. In the case of non-maintenance of a wife and family by the husband, as the law now stands, the justice can only grant maintenance.

9520. And a separation order too?—Yes, if coupled with desertion or cruelty.

9521. Yes, it requires desertion?—Yes.

9522. As long as she remains in the home and is not deserted, he is with her?—Yes, that is my meaning. If he does not maintain her in a proper way and provide maintenance.

9523. We have had that put in this form, that at present she has to leave the home?—And live separate and apart. That is another point that I suggest should be amended.

9524. I am not sure that I appreciate the first point?—Well, the first point is, if the wife makes an application for a simple maintenance order, the justices have not power to make a separation order in addition to the maintenance order since the case of Harriman *v.* Harriman, except it be coupled with desertion or cruelty.

9525. They never had the power except in the case of desertion, had they?—That comes to the same thing then, my Lord, I say they did make separation orders before this important case was taken to the High Court, and decided upon whether they had the power or not.

9526. What is the difficulty you wish to meet. We can consider the law?—The difficulty I wish to meet is this; that if the husband habitually neglects to provide his wife and children with food, and he does not desert her, nor yet is he guilty of cruelty, the wife should be enabled to obtain a separation order and a maintenance order as well from him.

9527. She can do so now provided she leaves the house?—Yes, but then he must be guilty of persistent cruelty.

9528. No, that is not so. You are confusing the law. Your difficulty is one that we have had presented to us, and we can consider what the remedy should be as long as we know the difficulty. Now, you do not, I gather from your proof, think that the order of separation has led to immorality?—No, not in my experience.

9529. Have you many cases in which the order has been set aside on the ground of the wife's misconduct?—Only one in three years.

9530. You say it is quite possible there are cases where orders have been made, although one or both of the parties may subsequently drift into living in immorality, but it is more than probable a similar result will follow if there is a separation by mutual consent, without any order?—Yes.

9531. You consider the moral tone amongst the working classes is as good as that in those above them?—Yes.

9532. Now, the question of publication; I should be glad to hear what your views are. Are you a member of the association communicated with by Mr. Peacock?—Yes.

9533. Do you agree with what he has told us?—Entirely on that point.

9534. You think also that publicity, if required at all, can be obtained by an official list of the judgments being published?—I do, yes.

9535. I should like to ask you a little more on the question of publication. Do you think that is a serious matter at present?—I do.

9536. On the ground of the detriment of the public?—Yes.

9537. What effect do you think you have found it to have upon young people?—A very immoral effect. There is a general rush to get hold of the spicy parts of the Sunday papers, for instance. The Sunday papers, as a rule, are divided into two different kinds, and I have myself come across, in all kinds of places, young people reading the spicy reports of divorces and other matrimonial disagreements.

9538. You mean you meet people in your round on a Sunday?—Yes, and on week-days, too. I do not say it is altogether confined to the Sunday papers; there are some evening papers that are quite as great sinners in that respect as the Sunday papers.

9539. Then do I understand your attention has been directed to that matter, so that you have considered it from time to time?—I have actually seen it.

9540. (*Mr. Spender.*) Only one question on the question of publicity. It has been put to us by certain witnesses that publicity is a deterrent in the first case for possible offenders. Is that your experience at all?—In criminal cases?

9541. Yes?—Yes, I admit the publicity in criminal cases; the first offenders are very much distressed.

9542. That would work amongst the working classes as well as others?—Oh, yes, the respectable working classes have everything to lose by losing their character. That is my experience of the better working classes.

9543. Then you will not suggest stopping publicity in the police cases?—Not the ordinary police cases unless there was indecency.

9544. You would apply the same rule if there was indecency?—If there was indecency then I would apply the same as in divorce cases; and even now in the hearing of indecent cases in police courts the magistrates have the courts cleared.

9545. Now these reports in Sunday papers; they are not by any means all divorce cases, are they?—No, plenty of indecent cases of all kinds in all courts.

9546. Then with regard to immoral influence we should be only taking one case. It opens up a much wider question than reporting divorce cases?—If you ask me my opinion I would include any indecent case: even in the police court.

9547. Then you do not think, as some witnesses have said, that the reporting of evidence in these cases (I do not know whether that applies to separation cases, but certainly they have applied it to matrimonial cases generally) is very important to check perjury?—The amount of harm done is a much greater contributor than the amount of good it would do.

9548. Therefore you would stop the publication of evidence and take the risk?—Yes.

9549. Then with regard to workmen's clubs; you would not say it was true in all workmen's clubs. You would make a distinction, would you not, between one kind and another?—Yes, I divide my reasons, and I was not asked for the percentage. I think the working men's clubs would be a small percentage of my three reasons.

9550. But it is the kind of club you are talking of which was indistinguishable from the public-house?—Yes, except that they can play cards and have every game.

9551. Do not you think that if men are to go to clubs they should go to where there is recreation?—I do not see much recreation in gambling.

9552. Then you are thinking of the particular class of club where there is drinking and gambling?—Yes. Well, if it is only gambling for a halfpenny trick it is gambling so far as the men of limited means are concerned.

9553. Now with regard to the recreations in which husband and wife may equally take part; are they on the increase?—Yes.

9554. That is what you would foster?—Yes.

9555. You think it is the recreation by the men alone?—Yes, and which is accepted by the men.

9556. You would look for a recreation in which both sexes take part?—Exactly.

9557. (*Sir George White.*) What is the population under your jurisdiction?—The population of the City is 53,000, but we are in the centre of a very large population. We have a week-end population of considerably more than we have of our own. 100,000 population comes in on a week-end probably.

9558. Have you examined the statistics of other police jurisdiction with regard to the number of separation orders?—No.

9559. Then you are not able to say whether your number is a very small number or not?—No; I should say from my own knowledge that they would be about equal—a fair average.

9560–1. I do not think that would be borne out by the evidence we have had. It comes to about 10 per annum in a population of 50,000.—Excuse me. There are 82 applications in three years. That is the numbers of orders made. If you take the population of Manchester as the last witness gave it, this would work out on about the same basis. It is 53,900 in the City, but I explained we had a large week-end population coming in. We are in the centre of a large mining population.

9562. But that would have no effect on the jurisdiction of separation orders?—No. It affects the police and that is why I give it. It affects me.

9563. But it would not have any bearing on separation orders?—No, not much.

9564. I think you said in some cases the maintenance is paid through the court officer and through yourself really?—Yes.

9565. And that that has worked extremely well?—Yes.

9566. Would you like to see that generally?—I should like to see a special officer of the court do it, but should not like to have much increase of it myself.

9567. But if payment were made through a police court officer you think payment would be made more regularly?—Oh, yes.

(*Chairman*). Would you ask about the employers?

9568. (*Sir George White.*) We have had the suggestion that an order should be made on the employer to make the payments?—I do not see how that could work out in practice, because, probably, with a third of these people the husbands are casual labourers, and they work for Tom Jones this week and Bill Jenkins next.

9569. But is it feasible when the circumstances would help it?—I have a great reluctance to serving even an ordinary summons on a workman at his works, and I would prefer to keep anything of that nature from his workmates or the workshop.

9570. You regard it as prejudicial to his interests as a worker?—I do.

9571. Then you consider the work of the justices, as far as separation orders are concerned, to be done well?—Yes, that is my experience.

9572. But in the event of any local court being given jurisdiction, would you think the justices equal to that?—Certainly not. I should be very much against it.

9573. Then you give injudicious marriages as one of the reasons of these matrimonial troubles, and you lay very strong blame on the hire system, I understand?—I do.

9574. Have you no suggestion to offer, would you say that in many instances these injudicious marriages are made because of the facilities they have of getting everything on credit?—I am afraid it induces a great many of them to be married.

9575. You have no suggestion to offer how that should be prevented?—Not this particular point.

9576. With regard to working men's clubs. Of course, we know that they vary very much in character?—Yes.

9577. Is it not possible for the club such as you describe as more or less a gambling and drinking club, to be dealt with by the police?—No, a club is under no more restriction now than it was years ago; you have not even the power to visit a club without a magistrate's order.

9578. But you can get it off the list if it is established for the purpose of drinking?—Yes, if you can prove repeated acts of drunkenness and it is carried on for any other object. There are always two sides to a club. I only say there is provision for drinking and gambling, and catering for him generally instead of being at home after he is a little tired of married life.

9579. Then does it not follow the more attractive a club becomes—even though the attraction may be legitimate—the worse their influence on the point we are addressing ourselves to?—Yes, I think it has a great effect in taking men away from their homes.

9580. Then, as I gather your general evidence (withdrawing the paragraph which you have withdrawn, and which we do not therefore, I suppose, say anything about) goes in the direction that you do not think divorce should be made in any way more accessible, or easy, for the working classes?—Or cheapened.

9581. And anything that would make it more accessible would be wrong, you think?—It would weaken the marriage tie. It would not be looked upon in the sacred way that I believe it is looked upon now by the respectable working class.

9582. And yet you admit there are a considerable number of hard cases where divorce should be granted?—Yes, and I suggest a remedy.

9583. You are against the introduction of any local courts whatever?—Yes.

9584. You desire that facilities should be brought within the reach of these classes that they may go to the higher court?—Yes.

9585. (*Mr. Burt.*) Just one question, following up what Sir George White has asked you. I understood you to put it that working men's clubs are frequently causes of matrimonial dissensions. Were you referring especially to those in Wakefield?—Oh, no, working men's clubs in general. I have an experience, in fact, I might admit at once I am a member of two working men's clubs myself, but I do not say they are of the class I have mentioned. Possibly it is a misnomer to say working men's clubs, but the ordinary clubs that are springing up like mushrooms all over the country. If you follow the police statistics they are increasing by leaps and bounds. As fast as you reduce the public houses, they crop up.

9586. You have a very extensive knowledge of working men's clubs?—Yes.

9587. (*Sir George White.*) Might I interpose for a moment? Has Mr. Harris any statistics to show that working men's clubs are increasing by leaps and bounds all over the country?—Yes, I can take my own town.

(*Chairman.*) Would you let him give them?

(*The Witness.*) Twenty-one years ago we had two clubs in the town, and now we have 26.

9588. (*Mr. Burt.*) I suppose a good deal would depend on the committee of management. They are generally managed by committees, are they not?—My experience is that any club, or any society of men that has an attraction for young married men after a certain time of being married, has a tendency to cause trouble at home; that is my experience; because it takes him away from home especially in the evenings, which, as you know the ordinary working man spends at home or taking his wife out for a walk, or helping in the garden, or something of that kind. Now, immediately he gets home he scarcely has time to get his tea and wash before he is off for his own amusement.

9589. You mentioned newspapers and games, not necessarily connected with the clubs, as a cause of attraction?—Oh, no.

9590. Have they usually libraries, too?—Oh, yes, a great many of the working men's clubs have.

9591. Have they in many cases lectures and classes?—Sometimes in the winter months many of them do—about once a fortnight.

9592. Then would you say that drink plays any considerable part in connection with the clubs, especially as distinct from public-houses?—I do not say that drink plays such an important part, because one's experience is that there is not as much drinking to excess now as there was in former years, either in clubs or anywhere else. I think men are more moderate.

9593. You think intemperance in that sense is diminishing?—That is my experience.

9594. It is not then so much in connection with drunkenness in the clubs that——?—Not drunkenness at all, but if you ask me if the majority of clubs depend for paying their way on the sale of drink, I should say, yes they do.

9595. And usually, if not universally, intoxicants are available in the clubs?—Yes, in 19 out of 20.

9596. (*The Archbishop of York.*) I do not want to pursue too much this fascinating theme of working men's clubs, which I know a good deal about, but I think your evidence is to the point that the effect on the home life depends largely on the character of the club?—Yes.

9597. If the club is a good, well-conducted club, often the wife finds it a great advantage?—I would have no objection to it.

9598. I have known wives find their husbands in the way always in the evening, but I do not labour that point. I should like to have your opinion on this; would you feel, if there were a proper system of places of recreation, where working men could take their wives and children, where they could spend the evening together, that would be the real remedy?—I think it would materially help to remedy it.

9599. You spoke of your knowledge and your long experience of these specially hard cases where divorce seems to be impossible, but, in spite of your knowledge of these hard cases, do you feel that any extension of facilities for divorce, except in the way of making the High Court more easy of access, would be a great danger?—I do.

9600. Do you adhere to one sentence in your proof, which I think is not in the paragraph which you have deleted, namely, "I am also of opinion that it would "be undesirable to have two classes of courts, as poor "people would resent having to go with their griev- "ances to an inferior court, while people with means "would go a higher court." You still adhere to that?—I do.

9601. Then you say in your proof that in your opinion marriage is entered into amongst respectable working classes with a full knowledge of its responsibilities. You would make a clear distinction in these cases between the respectable working classes and the great mass of floating casual people living in lodging-houses or lodgings?—Yes.

9602. Or in the lowest class of tenements?—Yes.

9603. With regard to the latter class (the more casual poor) would you say that facilities for divorce

would greatly improve their condition?—It would be no remedy whatever for that class.

9604. Then with respect to the class just above them, of whom you are speaking, you feel that, in spite of the hard cases, to increase the facilities of divorce amongst them would operate in the way of shaking that strong marriage conscience which they have now?—I do, and I will go further and say I do not think there is any wholesale desire amongst those particular classes for it, only in the exceptional cases I have mentioned.

9605. (*Chairman.*) I want to ask you just this: His Grace the Archbishop knows a great deal more than I do about it, but in these clubs you have mentioned, are they exclusively for men?—Oh, yes.

9606. You rather agree the difficulty might be met if the women and children could go, too, to places that were suitable, so that there should be a general recreation?—Yes.

9607. Rather than that of the one side only?—So that a man could not have the excuse that he could not take his wife there.

9608. Is there a rule that they are not allowed to introduce their wives?—Oh, women are not eligible, I take it.

9609. (*The Archbishop of York.*) There are a large number of clubs where working girls are allowed in on Sundays to see dramatic entertainments, and so on?—Well, I have not experience of that. I am told that is more in London than the provinces.

9610. (*Chairman.*) You are speaking of clubs where men are alone?—Yes, the clubs which restrict their hours on Sunday, and keep up a certain amount of respectability on that day.

9611. Why do you say that the poor classes would resent going to the county court?—Well, I gave that reply from a long experience of the working class, and as one that has come from the working class himself. It has been the prevailing opinion always (mind you, I do not admit it is correct) but there has been almost a universal opinion amongst certain sections of the working classes that there is one law for the rich and another for the poor.

9612. I dare say you are aware there has been an enormous extension of the jurisdiction in county courts of late years?—I am, especially with regard to the workman's compensation; but I would remind your Lordship that the working man has no other option but to go to the county court. He must go there.

9613. (*Sir Lewis Dibdin.*) Or any other man?—Or any other man.

9614. (*Chairman.*) He does not resent going there for that purpose?—He is bound to if he has any claim at all; he has no option.

9615. Take the bankruptcy jurisdiction?—There, again, they have no option.

9616. It is unlimited?—No option, my Lord.

9617. I do not see why, when they have no option in those cases, they should resent going when they have an option?—Oh, I do.

9618. Why?—Well, I can only give you what is on one's mind after all these years' experience of the working classes, and as I have seen it suggested in following the evidence that has been given before this Royal Commission; that actually one or two witnesses suggested that up to 2*l.* a week should constitute a case to be dealt with at a local court, and that sort of thing. To my mind that would be—well, certainly the working class would resent it.

9619. Supposing there was unlimited jurisdiction with the right of transfer as there is in bankruptcy cases?—Even then I do not think I would favour county courts. I have a great many reasons.

9620. Would you give them?—I have already given, as I think, some very substantial ones; but without wishing to say anything at all against the county court system I would perhaps venture this if I was pressed; that county courts are not as popular amongst the working classes as a good many people imagine, and for the simple reason—to my mind—that they are very often mixed up in the minds of the working men and the working women with the recovery of small debts such as I have described—the hire purchase system, the loan office, which Mr. Burt knows is pretty prevalent up in the North, small money lenders, and the ordinary tallyman that goes round the North forcing his goods on the people, and the wife of the house has to go and pledge it almost at once to pay the weekly subscriptions. That is mixed up in the mind of the working class with the county court, and you cannot erase it.

9621. Would that be met by allowing the interlocutory proceedings to be dealt with in the local registry and the county court judge coming down to them rather than their being brought to London?—In the present state of business, of my own knowledge the majority of county courts are overworked, there is a great deal of work in arrear now, and without you increased them and appointed special judges to go round trying these cases you could not overtake the work.

9622. That is a question of machinery and does not quite answer my question. Would you see any objection if the High Court judge who tries these cases came down to deal with them locally?—I would still prefer my own suggestion.

9623. That is finding the money to come to London?—Yes.

9624. How do you get over the difficulty, then, that they cannot begin the proceedings in London themselves?—Oh, they would make application to the Public Prosecutor, or call him by what name you like, but let him be the Crown Officer.

9625. To do their work for them?—To do this work.

9626. I dare say you have seen the suggestion of the Poor's Roll in Scotland?—No, I have not.

9627. It was in the evidence we have had?—No, I have not read that part. I have only read the English part.

(*Chairman.*) Very well; we quite appreciate your evidence and your points, and thank you very much for it.

Mr. THOMAS WILLIAM BYRNE called and examined.

9628. (*Chairman.*) Is your name Thomas William Byrne?—Yes.

9629. Are you chief constable of the City of Worcester?—I am.

9630. And also member of the Chief Constables' Association?—Yes.

9631. Have you held the office of chief constable at Worcester for 17 years?—Yes.

9632. And you have had 31 years' police experience?—Yes.

9633. You have been good enough to get out the returns for applications for maintenance orders and the orders made thereon in Worcester in 1907, 1908, and 1909?—Yes.

9634. Is the population of Worcester about 50,000?—Yes.

9635. I do not think I need trouble you to go through the tables. We will have that printed as part of your evidence. I observe you have 16 cases of desertion on which the order is made, and those were only for maintenance?—Yes.

9636. Nine cases of cruelty, seven orders being made for separation with maintenance and two orders for separation only?—Yes.

9637. I should like you to explain that. Why was it found sufficient to make orders for maintenance only in two of those cases of cruelty?—I cannot tell with regard to those particular cases, but it would probably be found that the cruelty was not of a very serious character.

9638. And that ——?—There was a probability of their coming together again.

9639. And that the woman was content with maintenance?—Yes.

9640. Then in four cases habitual drunkenness, separation order with maintenance, and in a case of

aggravated assault a separation with maintenance. So that you say out of 31 orders made, only 12 cases were separation orders?—That is so; 31 orders made and only 12 had attached to them separation orders in addition to maintenance. I think you will find that on another page.

9641. In half the cases, I understand, the applicant asks for payment through the court?—Yes

9642. And that is done?—Yes.

9643. Do you find that satisfactory?—It is.

9644. In several of the 31 cases the wife and the husband are living together again. Have you any number?—No; but I should think from 20 to 30 per cent. of cases of separation they have gone to live together again.

The following is the table referred to and handed in by the witness.

The number of applications for maintenance and separation orders in the City of Worcester, is as follows:—

——	1907.	1908.	1909.	Total.
Desertion	8	8	7	23
Cruelty	2	3	5	10
Neglect	—	1	—	1
Habitual drunkenness:—				
By wife	1	—	—	4
By husband	2	1	—	
Aggravated assault	1	—	—	1
				39

The number of orders made is as follows:—

——	1907.	1908.	1909.	Total.
Desertion	7	6	3	16
Cruelty	2	2	5	9
Neglect	—	1	—	1
Habitual drunkenness:—				
Against wife	2	1	—	4
Against husband	1	—	—	
Aggravated assault	1	—	—	1
				31

9645. With regard to the question of conferring jurisdiction on local courts in divorce cases. Do you find that at present a number of poor people cannot obtain a decree at the High Court because of the expense?—I do.

9646. Can you give me any instances?—I can, my Lord. "During the last few years four cases have "come under my notice where women have obtained "in the police court a separation order with main- "tenance, and in each case the husband was openly "living in adultery with another woman. In three of "these cases the husbands were repeatedly sent to "prison for non-payment of arrears of maintenance. "In two of the cases the women drifted into immoral "relations with other men."

9647. Would those be cases in which, according to your view, if they could have maintained a suit, and had the money to do it, for a divorce, it would have been desirable for them to do so?—Yes, my Lord. If before they have found themselves without money for a long period, they could have been assisted to obtain a divorce, I think there are cases where such an application could have been properly made and properly granted.

9648. Then you go on?—Yes; "I also know of "seven other cases, four where husbands have left "their wives and are openly living in adultery with "other women, and three where women have left their "husbands, and are openly living in adultery with "other men." I should like to add that most of these people are living in the immediate vicinity of the other people.

9649. So that they all know where one another are?—Yes.

9650. And they have no remedy by divorce because of the expense?—Yes.

9651. They have not the means?—No.

9652. Have you thought out what the remedy to suggest for that is?—Well, I feel strongly that the question of granting divorce should be maintained upon a high plane, and I should not be in favour of granting jurisdiction to any local court; but I am in favour of the views of the two previous witnesses, that where cases are found by inquiry to be *bonâ fide* cases they ought to receive assistance.

9653. From where?—From the public purse.

9654. Then what means of inquiry would you suggest?—Well, it is difficult at this stage to suggest any means of inquiry. At present ths King's Proctor has an agent—a reliable agent in cities and boroughs——

9655. You would establish a machinery by which people who could not afford it should be able to present their cases for consideration of somebody to investigate it, and then, if it was certified to be a good case, they would be allowed to proceed in the High Court?—That is my view.

9656. And the money found for them?—Yes.

9657. How would you treat the persons who have to defend those cases?—Well, in view of the fact that in criminal cases now the Crown finds the money for defending the criminal, that is a matter for further consideration as to whether——

9658. You would have to find the money for the other side too?—Yes; but if a man were found guilty the costs ought to be put upon him; he ought to be made to pay them.

9659. That is true; but supposing he had to get witnesses there and defend the case you would go to the extent of allowing both sides to have the costs of their attendance and proceedings provided?—Well, if justice is to be done, and the man has a good defence, let him have equal opportunity.

9660. That is equally so if the petitioner has a good claim; they should get their means provided; and so if a person wants to defend they would have their means provided?—You would probably then have a better opportunity of testing if there is collusion or not.

9661. But you would face the situation of both sides being provided with means?—I would rather that than have grave obstacles as at present in the case of the woman; I would rather grant assistance to both sides—the plaintiff and the defendant—than not grant the plaintiff assistance.

9662. Would you say that should come out of the rates?—Not local rates, but out of Exchequer funds.

9663. And you think that would be preferable to the High Court judge coming to try the cases?—I think it would; because the cases would be comparatively few where such applications would be made. I do not think there is a great demand for them which would justify the High Court judge——

9664. How many cases do you say there would be in Worcester?—To my knowledge I should say ten cases, but I do not suppose in all those cases the person concerned would apply; so if you struck a fair average there would be five or six; and these cases have arisen over a period of a considerable number of years; they are not all recent cases.

9665. That might afford some guide, you think, as to how many cases there are in the country generally?—It might. We represent a fair condition.

9666. If so, that would represent a substantial number, taking the whole country?—In populous districts; in places like Lancashire and Yorkshire it would.

(*Sir Iewis Dibdin.*) That represents arrears.

(*Chairman.*) Yes, he said distinctly it extended over some years.

9666A. (*Sir Lewis Dibdin.*) Your Lordship put to him this would be a very large number of cases. But that would be worked off in a very little while; it would not be a recurring number on the same scale?—Oh, no.

9667. (*Chairman.*) You mean it would dispose of those, and then of course there would not be the same number unless time was allowed for non-accumulation again?—No, that is why I mention that these cases are an accumulation of years.

9668. It must be a matter of speculation and estimate how many cases there would be in the country if you give the facilities that are suggested?—That is so.

9669. You would not give jurisdiction of this kind to the justices of the police courts?—No.

9670. We heard an opinion in favour of that the other day. You do not agree with that?—I do not.

9671. Would you give your reasons?—My reasons are that "the constitution of such courts is changed "from day to day, and the members comprising the "different courts would probably hold widely divergent "views as to how such cases should be dealt with. "Second. Because I consider it very desirable to keep "before the mind of the public the importance of the "sanctity of the marriage tie. This would, I think, be "greatly weakened if applications for divorce were "heard in the same courts as ordinary applications "for maintenance or separation. Third. That to "ensure something like uniformity in the decision of any "local court to which jurisdiction to grant divorce is "given, the constitution thereof should not be liable "to the constant changes which occur in a police "court, and further that the President of such court "should have had a legal training."

9672. Now on the question of separation orders; you say these orders were granted too readily in former times?—Yes, I draw attention to that.

9673. And you think that resulted in immorality?—I do.

9674. That has been corrected latterly?—In a great measure—at Worcester it has.

9675. During the first 10 years, you say, that was so?—Yes.

9676. That is because during those years where maintenance only was really needed separation was also granted?—Yes, except in one case separation orders were made.

9677. Well, we know about that change now?—And since then, out of 54 orders of maintenance made, in only 24 instances have separation orders been coupled with them.

9678. When is that?—The four years ending December last.

9679. So that decision was of some use?—It was, and it has been followed pretty strictly.

9680. I should like to ask you on the next point whether you have found by your experience that it might be desirable that the magistrates should have a discretion as to time?—I think it would be an advantage.

9681. It was suggested that might be made operative by granting an adjournment of the summons so far as it related to separation, but making an order for maintenance there and then. Would that meet your view?—Yes, I think it would. I find now, through the assistance of the police court missionary, when an application for summons is made the magistrate often adjourns the application or the summons to see if the police court missionary can bring them together again, and in a number of cases he succeeds before process is actually issued.

9682. Then you make the point we have heard very often, and which seems quite reasonable, that the woman should be allowed to get her order without necessarily leaving her home before doing it?—Yes, I have heard a number of cases of that sort where that would be desirable.

9683. Now I come to another point, the question of publication. Will you give us your view?—My views are that publication as at present ought to be prohibited—the details. But I think the names of the parties and the result of the proceedings should be published. I do not agree that the whole proceedings should be kept from the public.

9684. What is your experience about this, and why do you come to that conclusion?—My experience is this, that, even in small matters, people who are in, say, respectable positions, and are even apprehended for being drunk, or some other comparatively small offence, are quite concerned that their names should be kept out of the papers. Over and over again efforts are made to keep their names out of the paper.

9685. We are speaking now of divorce cases?—Yes, I have no experience, except judging from that standpoint, that it acts as a deterrent. The fact that their names would be published.

9686. But with regard to publication being prohibited, why do you come to that conclusion?—Well, I think if a person knew that no public mention would be made of his conduct if he was discovered would make him less careful than he otherwise would be.

9687. I know. That is one side of the picture. But you said you would not allow the publication of details in divorce cases?—No; I would not.

9688. What is the ground on which you put that?—Oh, the effect it has on people, especially younger people.

9689. That you think it more harmful than the deterrent side of it?—Yes; I do.

9690. To what extent have you noticed the effects of this reading on younger people?—Well, I cannot give any definite information with regard to that as resulting from my own experience, except judging what must be the result of reading the details that one sees.

9691. Have you in Worcester those publications?—Yes.

9692. I think the only other thing is you quote something on this subject which we have already had from some witness?—The head constable of Liverpool wrote to me on that subject.

9693. I think we have already had that. It is an emphatic expression from the head constable of Liverpool as to publication?—Yes.

9694. That is Mr. Dunning, the present head constable of Liverpool?—Yes.

9695. (*Mr. Brierley.*) I do not quite understand why you say that alteration brought about by Harriman *v.* Harriman has reduced immorality?—I do not think I say that.

9696. I think you said separation orders were granted too readily, resulting in great temptation to immorality, and sometimes to immorality itself. Do you think when the separation is not granted there is less chance of the parties leading an immoral life?—Well, the effect is almost the same. If you grant separation orders now they do separate.

9697. But if you grant a maintenance order on the ground of desertion, do you think the husband is less likely to live an immoral life because a separation order is not granted against him?—No, I do not think it makes much difference.

9698. And the same with regard to the wife?—Yes, but I did not draw the deduction which you put.

9699. I thought you did; that in consequence of there being fewer separation orders——

(*Chairman.*) He did not say so.

9700. (*Sir Lewis Dibdin.*) Was it not your point that for the first ten years these orders were granted too readily altogether?—Yes.

9701. And that had a bad effect on morals?—Yes.

9702. (*Mr. Brierley.*) I thought you meant the alteration brought about by Harriman *v.* Harriman had in itself a tendency to reduce the bad effects of these orders?—No.

9703. Now do you agree with the last two witnesses as to the estimate of the county court held by the working classes. I am rather surprised to hear that they were unpopular amongst the working classes?—I would not go that far myself. I could not speak from any definite experience upon it, and I would not like to say.

9704. You have had no means of forming an opinion about that one way or the other?—No; as to what the views of the working classes are on that I could not form an opinion.

9705. (*Mrs. Tennant.*) Sometimes the wife is too poor to take out the order that is granted against her husband—to pay the court fee necessary to take out the order?—Yes.

9706. Have you had that experience?—Yes. Where an application is made by a woman for a summons for desertion or cruelty, or any of those offences named in section 5 of this Act, and she makes a good case, and she has no money, almost universally a free summons is granted.

9707. I am not sufficiently experienced in the procedure, so you will forgive this question if it is unnecessary. There are cases that show summonses granted and orders not taken out: there is a summons first to get the husband there?—The first summons to bring him before the court to have the case heard.

9708. That is what you call the free summons sometimes?—Yes.

9709. Then after that the order is made, and then the fee has to be paid for that order to be taken out?—That may be so, but if a woman has been granted a free summons you may take it that the consequent order, if she succeeded in her application, is also granted free.

9710. Yes, I can quite see that, but are there cases in which she may have the means to get the money for the summons, and then owing to delay because her husband has not been paying her alimony she cannot get the necessary sum to take the order out?—There, again, in a *bonâ fide* case a free warrant is granted. It must of necessity run a month before she could obtain a warrant. If the man does not pay anything for a month we could not enforce it until that month has elapsed, and if she is a poor woman a free warrant is granted.

9711. I gather from other witnesses that practice is not universal?—That may be so.

9712. Would you recommend any amendment that would enable that to be universal?—Well, I find a number of cases happened in our courts where I think it is quite right in cases of very poor people for them to have the free assistance of the court, and our court is fairly ready on proved poverty to grant these summonses and the subsequent process.

9713. (*Mr. Spender*). Might I ask one or two questions about reporting. I think you heard Mr. Harris' evidence just now. He said he would apply his rule to the police court cases entailing similar evidence as we are thinking of?—With that view I entirely concur.

9714. You are not speaking only of reports of matrimonial cases?—No.

9715. The police evidence seems fairly strong on this subject. Is it founded on any concrete experience? For instance, we often see in London in children's cases in the police courts that boys have been led astray by reading a particular kind of sensational fiction. Have you in your mind any case in which it has been alleged that particular offences have been rendered more frequent by the reading of newspapers?—No, I think it would be difficult rather to put into concrete form. Might I put it this way, that I base my view on what I may call the human nature standpoint, that those details, if printed, must have a bad effect.

9716. Yes, but what I want to get at is this, whether it was based on any particular police experience, or whether it is your general view, which we all might, or might not, have of the probable consequences?—I think you may take it, it is the general view rather than——

9717. It is not founded necessarily on your police experience?—Oh, I think not.

9718. And if these rules apply you would wish them them to apply to all the same sort of cases?—Yes, if you get a case of bestiality that is going to the assizes; that ought to be prohibited just as much.

9719. Do not magistrates as a rule clear the court in such cases?—No, not clear the court.

9720. They have got the power?—I doubt if they have. They ask women to retire.

9721. And do they ask reporters not to take them down?—No, but I think one may say this for the Press, that in that particular type of case they act very judiciouly; but there are cases where I think too much may be given.

9722. Then you are thinking of the type of case where the details are not actually offensive in the sense that those extreme cases are, but which do raise questions of matrimonial misconduct?—Yes, of sex. Where these reports give details which do and must raise the question of sexes, I think they would be better left out.

(*Mr. Spender.*) Does your Lordship know about the clearing of the courts by the magistrates?

(*Chairman.*) Well, I do not know quite. You mean if a case is not an indecent case, but is of sex character.

(*Mr. Spender.*) Yes, my Lord.

(*The Witness.*) Well, I think they may not clear the court, but they generally ask women to go out, and they direct the police generally to put young boys out. We act from the best standpoint, and boys are kept out. It is not often that the court is cleared. Of course under the new Children's Act all cases involving the hearing of cases against children, where it is a question of some offence against a girl, the court can be and is cleared now, and they are practically only heard in the presence of the reporters and the officers of the court.

9723. In considering this matter are you thinking more of the local press or the Sunday press?—Well, the Sunday newspaper generally; that class of paper.

9724. I suppose, generally speaking, the smaller the place, the greater the publicity in police court proceedings?—Yes.

9725. Someone sent me this morning a paper from Worcester, and he remarks on it that it is the practice in Worcester, he thinks, to report nearly every case that comes into the police court?—That is so, yes. But in Worcester we have two evening papers, and I think four weeklies, and they want some news.

9726. Something to fill up you were going to say. That is not what papers generally want?—No, but with regard to our own particular locality.

9727. As the town increases in size the amount of publicity would decline?—Yes, I think you would find space in the paper would be of more value, and the smaller the community the greater the interest taken in all that appertains to that community. Everybody knows each other, and each case is of more or less interest for a greater number of people.

9728. Do you imagine if divorce could be treated in local courts they would be very fully reported?—They would.

9729. (*Chairman.*) The general effect of what you say on that point I understand to be that, leaving apart actual indecency, sex questions are not desirable to be reported at all unless it is something of a necessary character?—That is my view.

9730. The mere suggestiveness of them, apart from any indecent form of reporting, is what you are objecting to?—Yes.

9731. As to indecency there are stronger grounds still?—Quite.

9732. And your view is that at present divorce cannot be obtained in many cases where it ought to be if the party desired, and you suggest a scheme for that to be done without a local court, by providing the funds for doing it?—That is my point. I think divorce is an important question, and ought to be maintained on a high level.

(*Chairman.*) I thank you very much for your evidence.

Mr. Joseph Davidson Sowerby called and examined.

9733. (*Chairman.*) I think you are chief constable of the borough of Plymouth?—Yes.

9734. How long have you held that office?—18 years.

9735. Plymouth we know is a very well-known military centre as well as a mercantile port?—Yes.

9736. I daresay you have had a large experience of the various classes of people in Plymouth?—In Plymouth, and in Leeds before that.

9737. Were you before that in Leeds?—Yes.

9738. As what?—As chief inspector of police.

9739. Have you found that there are many people

in Plymouth who under the present law cannot in consequence of the expense make application for divorce?—I have, my Lord.

9740. Do you say that instances are within your own knowledge of that?—That is so.

9741. Are those numerous or not?—They cropped up periodically and during my 18 years service there I have known many.

9742. Many?—Very many.

9743. And what is the difficulty—expense always?—Poverty.

9744. That is the same thing. Do you consider a local jurisdiction would remove that difficulty?—I do.

9745. Are you in favour of that?—I am in favour of some better facilities being given to the very poor to facilitate their obtaining divorce in deserving cases, either by the establishment of a local court, or I do not disapprove of the suggestions made by my colleagues.

9746. But you agree something must be done?—Something must be done.

9747. I notice you said in your proof house rents in Plymouth are heavy, and there are few small houses suitable for working people?—Very few indeed.

9748. Does that lead to people living in lodgings?—It leads to houses being let off to numerous families—large houses with two, three, four or five families residing in some.

9749. And do you have a large sailor population living in that way?—Yes, and military.

9750. Men being away frequently on foreign stations?—Very frequently.

9751. Has that led, in your experience, to any difficulty?—Undoubtedly.

9752. In what way?—Husbands away, wives left alone, living with other families in the same house; many of them young country girls that have married young men, say, from parts of Cornwall and Devonshire, who have drifted into the Navy. They have gone back to their birthplace and picked up a sweetheart, brought her there, and she is left in contact with other men in very undesirable surroundings.

9753. You have received complaints from the husbands abroad as to what is going on?—Frequently from all parts of the world.

9754. Sometimes anonymous?—Many times anonymous.

9755. Are those letters suggesting immorality on the part of the wife?—Sometimes, and sometimes it turns out to be correct.

9756. I see further you refer to having received complaints from husbands and wives of immorality and cruelty; is that so?—That is so.

9757. And there is some expression of a desire not to live together. Will you tell us what it is you really have heard, and what you know with regard to that?—I have heard complaints, my Lord, from sailors on foreign stations, and have thought it wise to make private inquiries, the result of which I sent to the captains of the vessel to use his discretion as to how much of the information he should give to the husband, and upon the husband's return on some occasions there has been a mutual separation without any order by the court. On the other hand, I must say this, that I find sailors—the Jack tars—are generally very forgiving, and they frequently forgive where I am afraid I should not.

9758. Do you find in some of the cases they express a determination not to live together?—That is so.

9759. And then how do they get on; can they find the money for divorce?—In many cases it is entirely impossible.

9760. What happens then?—The wife, if she is a good moral woman, has to work for her livelihood by charing or going into domestic service, and the husband takes care of himself.

9761. Do you find this sort of separation does lead to immorality?—Undoubtedly.

9762. And yet the expense is too great for either side to relieve themselves by proper proceedings?—Well, the man only has a very small income, and the wife has only what the husband gives her, and a separation means in many cases cohabitation with other people, on the part of the man particularly.

9763. Then you regard this from what you say as a substantial grievance?—I do.

9764. Which should meet with some remedy?—Yes.

9765. You give here an illustration. I do not know whether that will assist us. You say "it is within the last fortnight" in your proof?—Yes; I was waited upon by a young married woman asking me to advise her how to act. She was married to a petty officer in the Navy. He had been home about 10 days after an absence of about six months. He went to his wife who was living with her married sister—she had no home of her own. He stayed with her about seven days. Then he turned round on her and told her, "I "do not know how it is"—calling her by her Christian name—"but when I have been a week with you I am "tired of you, and I am going to town to pick up a "prostitute." The girl followed him to town, and saw him pick up with another woman and go away with her; and that happens every time he comes home.

9766. And she has no remedy?—She has no means to get the remedy.

9767. Is that the case you refer to in your note on the second page?—No.

9768. Well, what is that? It is where you commence "within a fortnight a young woman" —— ?—Ah, that is another case. That is where a married woman of 28 or 30 lived in a retail licensed house in Devonport—that is an adjoining borough; there the husband seduced a young girl of 14 years. That child gave birth to a child in her fifteenth year. The man, when the discovery was made, ran away from his wife and came to London. The wife left Devonport—the adjoining borough—and came to live in Plymouth. From that time until the present time the wife and her husband have been living apart, and he has been making no contribution to support her, and she is too poor to seek it.

9769. Has he been living with somebody else?—He is living with another woman here, and his wages are about 50*s.* a week.

9770. That would be a case where she could obtain an order for desertion?—Yes, she could get an order for desertion, but she has not the means to obtain an order or divorce.

9771. Those are rather typical cases that you have mentioned here, or are they rare?—Oh, rare. There is another case I mention there, where the man ——

9772. You say in your proof "Numerous cases of a "similar nature have come to my notice"?—Within the 18 years. I do not mean to say within one year, my Lord.. There is another case where a married man left his wife and went to live with a woman in Cardiff. By the woman in Cardiff he had four illegitimate children. In that case there was a separation order granted by the court, and the wife did not press the man for the money. Her father was a stone quarry owner in Cornwall, and while he and his wife lived the daughter—the married woman—was taken care of. But about two years ago she lost both her parents, and now she is left with a son who is earning sufficient to keep himself. He is about 20, and another boy about 14, who is a lunatic in an asylum. It is very hard on that woman.

9773. She cannot get a divorce because she has no means?—Yes.

9774. Those are cases that you think ought to lead to an opportunity for relief?—I do, my Lord.

9775. You say in your proof, "In these cases the "husband and wife are practically separated for life "although not divorced, and I submit that separation "of that kind is not conducive to morality"?—It is not. I think that is proved by the four illegitimate children.

9776. Applications are frequently made to justices in Plymouth on the ground of persistent cruelty?—Yes.

9777. And the police make enquiries?—In every case where they apply for a free summons.

9778. And the magistrates do their best to get the parties together?—They are extremely kindly disposed.

9779. You state that 69 such applications were heard in the public court, of which 35 were granted and 34 refused, so that only 50 per cent. were granted?—Just about 50 per cent.

(*Sir Lewis Dibdin.*) In three years.

(*Chairman.*) In three years.

(*Witness.*) Within that period, my Lord, I daresay there would be four times that number of applications made for summonses to justices, and the justices would direct a preliminary enquiry, and the result would be that probably a third or a fourth—a quarter of the applicants would be granted summonses.

9780. (*Chairman.*) What becomes of the others?—Well, when the husband and wife are seen together, they frequently make it up.

9781. Then you say in some cases where separation orders are obtained the parties remain apart?—In some, my Lord. Of the 35 orders granted, 14 at the present time are living apart.

9782. How long is the maximum time—that is in the three years?—Yes, you must take the maximum at about 18 months. I have traced 10 of them living together, and 11 I cannot trace.

9783. How many are living apart?—Fourteen.

9784. And the payment was made in those cases by the husband?—Payment being made in all the cases. Occasionally the husband will have to be summoned for arrears, but they are all paying.

9785. But you go on to say in these cases the order is practically equivalent to a divorce except that it prevents re-marriage?—Yes.

9786. "But in other cases the parties are sepa-" rated for only a short time and finally come back " together"?—That is so.

9787. Then you say in several cases where they are living apart the wives are content to live properly and the husbands, though paying the income, are living in open immorality with other women?—In some cases.

9788. How many cases do you know of?—I should not like to commit myself to a number, my Lord, but I know of several at the present time. Very few of the wives follow the same course.

9789. Have you had any cases in which the order has been rescinded on the ground of the wife's misconduct?—Not one.

9790. The next point you have already stated. The last point in your proof is in regard to publication. What have you to say about that?—I agree with the other witnesses in regard to that. I think it is undesirable to publish details of any indecent or suggestive nature either in connection with divorce proceedings or criminal proceedings.

9791. Have you found in your experience that that has had an effect in any way, on the younger people especially?—No, my Lord, I cannot say that I think it has.

9792. What do you base that upon?—A case that happened a few months ago. There was a case in which a clergyman was a co-respondent in a divorce case in London. I forget the name of it. There was great interest manifested in that case, and I remember in the house of a friend one evening hearing a conversation between several young ladies on the point, and by the interest they evoked the case was undoubtedly being read word by word by those young girls. I do not think that can be good.

9793. (*Mr. Brierley.*) Are you a member of the Chief Constables' Association?—Yes.

9734. Are you a member of the committee?—No. I am a member, but I am inactive.

9795. I was only wondering whether you had taken a part in the recommendation made by the association?—Absolutely none; I am quite independent.

9796. I understand you to say you are in favour of additional facilities being given to poor people for divorce. Have you considered the suggestion that the county courts should have jurisdiction?—I do not feel competent to pass any comment on that. I should like to say this, that I certainly think a county court, presided over by a qualified legal gentleman, would be a far better place than the police court where frequently you only have ordinary magistrates.

9797. I think you may take it all the county courts are presided over by legal gentlemen?—Yes, that is what I say; quite.

9798. Would you agree with the last witnesses that the county courts are not popular among the working classes?—I do not think I would be justified in saying that.

9799. Am I to understand that you have really formed no opinion about the matter, or that you do not think they are popular?—I do not think they are unpopular. I do not know why a poor man or a poor woman should object to obtaining what they require from the county court. I can see no reason.

9800. Then you do not think the working classes would have any objection to having divorce cases tried by the county court, simply because it was a county court?—Why should they? I cannot see it.

9801. I do not know, but we have heard that they may have an objection?—Well, I do not think so.

9802. (*Sir George White.*) One word with regard to the housing of the poor at Plymouth. You mention the fact that there are very few small houses suitable for working people. Do we understand from this evidence that you consider the way in which they are housed conduces to immorality?—Yes, in some instances I think it is very probable.

9803. It has a tendency?—Yes, I think so, sir. I might go a little further with respect to that question to do with the houses where there are four or five families in the one house. Take a young married woman living there alone; the husband away. A sailor's wife; she in common with every man and woman in that place has to use the same domestic arrangements. They are common to the house; that alone is not good.

9804. (*Mr. Spender.*) Have you a stipendiary magistrate?—No, I wish we had.

9805. Then your separations go before the ordinary justices?—Yes; of course they are advised by the clerk.

9806. (*Chairman.*) Do you know of your own knowledge that cases from Plymouth do find their way to the Divorce Court when the people have found the money?—A few; very few—comparatively few of the number of complaints we receive of cases that could be brought here were the people able to bring them.

(*Chairman.*) I must thank you very much for your evidence, Mr. Sowerby.

Major PULTENEY MALCOLM, D.S.O., called and examined.

9807. (*Chairman.*) Are you chief constable of Kingston-upon-Hull?—Yes.

9808. You retired from the army with 24 years service, and have been chief constable of Hull since December 1903?—Yes.

9809. Are you a member of the Chief Constables' Association?—I am not.

9810. First, I would ask you with regard to the question of conferring jurisdiction in divorce matters on local courts. Do you find, or have you any reason for thinking, that at the present time the poorer classes cannot reach the Divorce Court in London?—That is so.

9811. Do you think any remedy can or should be provided for that?—I think the number of cases in which the poorer classes wish to go into the Divorce Court are very few, but no doubt there are isolated instances where they cannot go into the Divorce Court on account of the expense.

9812. You say here that you feel you have not sufficiently studied the subject to be entitled to give an opinion on all the aspects of the case?—Yes.

9813. But on some perhaps you can do so?—With regard to the choice of the court that should adjudicate, I am strongly of opinion that what Mr. Peacock of Manchester said is the best alternative.

9814. Finding the money?—I think it should not be left to a local court; that it should be a court presided over by an eminent judge who is well versed in divorce matters.

9815. Mr. Peacock's suggestion, as I followed it, was substantially that, with the addition that the locality or the State should find the means for the parties to bring their cases before the court?—I should say Mr. Peacock meant cases where it was absolutely necessary.

9816. Oh, yes, in proper cases?—I do not think the local courts have anything to commend them. I think what Mr. Peacock said is true. He said he thought the poor people might very properly criticise the fact that they had to go to one court and that the other classes went to another. I think, on the other hand, if I may be permitted to say so, that those in middle class positions might very easily say the same: "Why "should we have to go to the expense of going to "London when the poor people can come to this "court?" I think it hits both ways.

9817. Just to follow out the line of thought you are presenting; why should there be any objection to their going to the local courts if it existed, instead of not going to any court at all as at present?—I am greatly against local courts, my Lord. I think, first of all, it lacks the dignity that is necessary for a court which is going to deal with such a serious matter as the sanctity of marriage.

9818. I quite follow that; but I was asking as to the objection of the individual to go to the local court which you suggest. Why should that objection exist if, as at present, he cannot go to any court at all because of the expense?—I do not quite follow.

9819. It is suggested by some, you know, that there should be a local court, and it is suggested by others that there should be a High Court judge coming down. It is suggested by Mr. Peacock that the expense of going to the court should be provided, and that they should go to London. I do not quite follow why you say a poor person should object to a local court, when at present he cannot go to the court at all?—Will you let me give one instance. The moment you had a matter locally dealt with you would have the whole matter in the local press; it would become of local publicity, and I think that would be strongly objected to by the poor, considering the rich could take their cases to London, and probably gain less publicity. It would also come under the objection that I shall make later on as to publishing these matters in the press. It would give local notoriety which would be very bad.

9820. That difficulty might be met by excluding the publishing of reports in the press?—And excluding the public from the court?

9821. Yes?—Well, I do not agree. I am against the local court.

9822. One ground you give is publicity; then I understand you have another?—I think the dignity of the court would be lacking.

9823. Then your view would be rather to adopt the line suggested by Mr. Peacock of, in proper cases, providing the necessary means for the persons to have their cases heard in London?—Yes, exactly as Mr. Peacock said; that if enquiries were made by a Crown official from a competent local authority, and the case was found to be a really deserving one, in which there was disclosed real necessity, I think then the case ought to be sent up to London and dealt with, without any expense to the very poor person.

9824. Then with regard to the separation orders. Have you got a number of separation orders at Hull?—Yes.

9825. Both for drunkenness and other causes. May I take it from your proof: 1904, 57; 1905, 53; 1906, 45; 1907, 70; 1908, 78 ——?—Eighty-two, my Lord. I have made a slight mistake there.

9826. And 1909, 49?—Sixty, my Lord, for 1909.

9827. Would you tell us, if you can, whether you can differentiate amongst those, between those which were separation orders and maintenance combined, and those which were only for maintenance?—No, I cannot, but I can give you the number of maintenance orders.

9828. That would be nearly the same thing?—No, not quite, because a maintenance order within the last few years has been granted where there is no separation order.

9829. That is what I mean; when they have been granted separately?—I could not give you those, but I can give you the total number of maintenance orders for those years.

9830. For each year?—Yes.

9831. Maintenance without separation?—I cannot say. I can give you the total number of maintenance orders.

9832. That is there, is it not?—No.

9833. Take, for instance, 1909. You give us 60?—Yes, 60; but there were 58 maintenance orders.

9834. Fifty-eight out of 60?—Not necessarily out of 60; that is my point.

9835. I cannot quite follow?—Well, maintenance orders might be granted where there was no separation order.

9836. Then what does the 60 represent?—That represents the separation orders within the year. The orders granted to women for other causes than drunkenness within the year.

9837. Separation orders?—Yes.

9838. Then in addition there are maintenance orders?—The maintenance orders are separate. There might be a maintenance order when there has been a separation order.

9839. Will you give us the maintenance order separate?—The maintenance orders in 1904 were 64; in 1905, 52; in 1906, 45; in 1907, 64; in 1908, 79; in 1909, 58.

9840. Would you mind telling me when you look at 1909; do you mean there were 60 orders in which there was a separation order, and 58 in which there was nothing but maintenance?—I mean, my Lord, there were 58 maintenance orders and there were 60 separation orders. It does not follow that they referred to the same case.

9841. Then do you mean there were altogether 118 orders?—No, because some of the 58 may be included in the 60.

9842. I quite see. Can you separate at all the orders in which there was only maintenance from those which include separation?—I am sorry to say I cannot; I will send it to you.

9843. All this means if there were 60 orders altogether, and in those 60 there were 58 for maintenance?—Not necessarily.

9844. Might I get at it in another way. How many orders altogether, of any kind under these two Acts, were made in 1909—the Act of 1895, and the Act of 1902?—I could not tell you that without going into it, because I should have to see how many of the maintenance orders were parallel with the separation orders, my Lord.

9845. How many orders altogether of any kind were made?—Well, that would be 118.

9846. In individual cases between husband and wife, how many couples have had orders made between them?—I cannot tell you that. I cannot tell you the number of couples that that represents.

9847. If there were only 60, of course it would be 60 couples?—If there were only 60, but, unfortunately, we are speaking of the 58, maintenance orders as well.

*9848. Might I see your table. Perhaps that will help me. (*It was handed.*) Well, I do not think this helps us on that point?—I will send it to you.

*9849. One year will do, 1909. If you would send us the total number of orders made, the number in which there was maintenance only, and the number in which the maintenance and separation were combined. I see with regard to drunkenness there were three orders given to wives in 1904, one in 1905, and one in 1909. That comes to a very small matter?—That is so.

* NOTE.—The number of separation orders granted to wives for other causes than habitual drunkenness was as before stated, 60—in 38 of these there was a maintenance order as well, but there were 20 maintenance orders made in cases in which the wives had not asked for separation orders.

9850. Do you sit at all with the stipendiary magistrate? Are you there when he is sitting at all?—Frequently, and with the justices.

9851. And he frequently adjourns to try and get the parties together?—Frequently; so do the justices.

9852. And all those present practically use influence? All of them—before they come into court and after.

9853. Now you have given the statement that you think the effect of a separation order differs according as you regard a man and as you regard a wife?—I do.

9854. Would you tell us what you find is the difference?—I think the man is certainly apt to take up an acquaintanceship with another woman. I think the woman is very unlikely to act in the same manner, particularly if she has children, and has her allowance to consider. I think that in the present law a man stands to lose far too little by the separation orders. If I may explain it in this way. I had a case yesterday morning from Bristol. There was a warrant for a man for 3*l.* 8*s.* 11*d.*, I think. In order to get that 3*l.* 8*s.* 11*d.* it will be necessary to send a policeman to Hull with his return fare costing 37*s.* 6*d.*, and he will have to take the man down, that costs another 18*s.* 6*d.* A cost of 56*s.* excluding all such things as subsistence allowance for the policeman and other expenses. It will cost that to get that man down to Bristol, and then when he gets there he probably will not pay, and he will go to prison to wipe out the debt.

9855. Do you mean some man being arrested in your division from Bristol?—Yes, but that is a very ordinary case, my Lord.

9856. Then the cost of enforcing these orders is enormous in proportion to what is to be recovered?—Yes, and this is my point, my Lord: I consider that there ought to be greater facilities given for the woman to get her maintenance. A woman comes to the court and she asks for a summons against her husband for whatever it may be under the Act of 1895, which costs her half-a-crown. She probably employs a solicitor—or possibly employs a solicitor; she gets her order and her maintenance order; the man goes away; he lives with another woman. He does not pay her a halfpenny. She goes down to his house to ask for her 5*s.* a week, or whatever it is, and he knocks her about. She probably stands that, hoping to get her 5*s.* It gradually accumulates, and at the end she comes to the court again, and she asks for a warrant; for that she has to pay 5*s.* 6*d.* even if he is in the city. The man is then, if his whereabouts is known, arrested. He is brought to the court, and he probably tells a plausible story. He gets a certain time in which to pay, but even then he does not pay. He may get away out of the city, and if there is then a commitment order on the man, he will have to be brought all the way back to the city where the commitment order is made in order to be lodged in the prison. The woman never gets a penny out of it.

9857. What is the remedy for all that?—Well, I suggest that the failure to give the maintenance to the wife after a limited time—say a month—that failure to pay that money over to the wife should be treated as contempt of court, and that the man should be arrested and if necessary punished there and then. I think it would have a deterrent effect. I think it would stop a great number of separations.

9858. Let us follow that out. That is what happens now, is it not? If he does not pay he is arrested, and if it is thought he can pay and will not, he is sent to prison?—Not necessarily. The wife probably waits and waits and does everything she can, but the sum all the time is mounting up; probably he gets away, and she does not know where he is.

9859. That would be the same if the punishment was for contempt of court?—It would not cost her anything.

9860. Why not?—Because she would not have to take out a warrant. I admit, as one of the last witnesses said, in certain cases the court might grant a warrant as they might grant a summons free of expense to the wife.

9861. But to enforce contempt of court you have to take out an order for arrest which is practically the same as a warrant?—I think it ought to be understood when the maintenance order is made that if a man does not pay the award of the court he will be arrested and put in prison; and if he comes out he will have to pay then, and if not then imprisonment again.

9862. That can be done now?—Not without expense to the wife; it will want new powers.

9863. Yes, but not new powers for contempt of court?—I only put that, my Lord. I believe, as a matter of fact, it is a question whether you can have contempt of court—whether the ordinary police court is a court of record.

9864. But supposing the order to pay contained a stipulation that if he did not he would go to prison. You would still have to pay for the officers to take him. They would have to go to Bristol in your case?—I do not think so. If you made an order sitting as a judge in Hull and the man had not paid in four weeks, the chief constable could arrest.

9865. But you put the case of a different town. Supposing he was in Bristol?—I have an additional suggestion to make there. I suggest when there is a commitment order he should be lodged in the nearest gaol and not brought back.

9866. Instead of bringing him all the way back?—Yes, my Lord; but the effect will not be to put him in gaol—do not make any mistake about it—the effect will be that he will pay his wife regularly. That is my contention. Being adverse to divorce and in favour of separation, that is my point; let the woman get her allowance or maintenance; let her get her alimony, and she will not want divorce as a rule.

9867. Will you tell us why you are in favour of separation and not of divorce?—Well, I have strong feelings on the sanctity of marriage. I feel it will do us nationally no good to be constantly weakening ——

9868. Do you go so far as to say it should never have been granted at all?—I am against divorce. It is a mere question of the value of a man's or a woman's oath.

9869. But are your views so strong that you do not approve of the present law?—My Lord, it is one thing not approving of it in my own individual capacity and recognising the law of the land. I thoroughly recognise the law of the land.

9870. Yes. I mean do you approve of it?—Personally?

9871. Yes?—I cannot conceive myself divorcing. I think if I swear to take a person for better or for worse, and if it turns out worse I do not think my oath is cancelled.

9872. Though you recognise the law, then you are personally not in favour of divorce?—Certainly not.

9873. (*Sir Lewis Dibdin.*) May I say by "personally" you mean in your own person?—Yes. I recognise the hardship, and the law being what it is; as I have already said I would give the poor certain facilities.

9874. (*Chairman.*) But do you disapprove of the present law, speaking as an individual?—Well, I do not disapprove of the law, because, I take it, the Legislature has considered everybody's opinion, and that I am probably in the minority.

9875. At any rate, you would be against extending it?—Distinctly.

9876. And the points you have been making with regard to these arrest matters, are with a view to a more ready and speedy way of getting the order enforced?—The point I am making is, that there should be no hardship on the woman. Women suffer. I do not think a woman, as a rule, wants divorce; she wants maintenance for herself and her child.

9877. May I take it, you wish to convey, that the original order for payment should include in it an order to go to prison in default, and secondly, that the prison might be the place where the man is found, and not that he be brought to the other place?—That is so. I press that.

9878. Then with regard to the question of publication; you favour us with your views about that?—With regard to publication of divorce cases, I think the fact of the divorce being made public—I mean, the names of the people being published, and giving the place where these things happen—might have a deterrent

effect, but I consider the publication of the details should be prohibited by law. I gave that evidence, my Lord, when I was before a joint committee on the subject of indecent advertisements.

9879. Do you mean a joint committee of both Houses?—Yes, with regard to indecent advertisements; that was in May 1908, and I heard other chief constables give expression to the same opinions as my own.

9880. You speak here of the evil influence exercised by the publication of sordid details of divorce and police court cases?—Yes, very much the police court cases as well. I have several cases in my mind. There was a notorious case in America, of which the details were published in a most pernicious way, and I speak with some knowledge on this subject, because I speak as an army man who knows pretty well what the effect on youngsters of these things coming out in the papers is; and I speak as a man with some knowledge of public school boys, and as a man who has had a good deal to do with young boys in the poorer classes. I do not speak with very great experience with regard to young women, but at the same time, I have spoken on these subjects to ladies who are interested in social work, and I know their opinion is the same with regard to the women and the girls, as it is for the youths and the boys: publication of details do an untold amount of harm; they put things into children's minds which would never get there but for these reports.

9881. We have heard it said that the publication of a divorce case has a deterrent effect on people committing adultery?—I think that is so.

9882. Would you put that as in any way equivalent—if it has a deterrent effect—to the more serious matter of the public morality?—I think the disadvantage of the reports altogether outweighs the advantages.

9883. Your answer has suggested something to me which has not been mentioned yet. The evidence has been directed to reports of cases of this character in our own courts?—Yes.

9884. I gather from what you have just said, that you would extend that to the reports of cases of this character, whether the case is heard in this country or abroad?—I would indeed. I would say there would be greater difficulties in this question of reporting if you had divorce cases tried locally.

9885. You think that would be an additional reason for excluding publicity altogether if you had a local tribunal?—Yes, an additional reason for not having it locally.

9886. But that reason would not exist if you did not have them made public?—It is very difficult not to let these things leak out. Somebody writes a letter if you do not get the reporter's report.

9887. Your suggestion makes one consider matters outside merely our own courts?—I am very glad, my Lord.

9888. It is a valuable suggestion. Then, with regard to the amendments of law in divorce and matrimonial matters. Already you have indicated that you deprecate any tendency to increase the amount of divorce, and you would prefer cases to be treated as separation cases?—Certainly.

9889. Have you any views, based upon experience or otherwise, as to placing men and women on the same footing?—Well, as a matter of principle, I think my sister is as much entitled to live with a clean man as my brother is with a clean woman.

9890. Does that express your view?—I should be sorry to see any extension of divorce, but I think this is inevitable on the principle. At the same time I would point out that, in this respect, a woman must always be at a disadvantage.

9891. From the money point of view?—From the money point of view, and also I think there may be—not amongst the poorer classes, and not amongst my own class, perhaps—but I can fancy cases where if a woman has a right to sue for one act it may lead to abuse. I can conceive that.

9892. You express yourself with regard to this in this way: "The greater discomfort and the pecuniary "strain upon the parties (especially upon the man) "which divorce or separation involves, the fewer "divorces and separations there are likely to be"?—Yes. I have heard what has been said about the question of a person being subject to a long term of imprisonment, and I have heard it discussed with regard to lunacy. I am against both entirely. I think nothing would be more calculated to put a man into a lunatic asylum than to have it hanging over his head that he would lose his wife and family if he went mad. I cannot imagine anything, if a man or a woman was in a depressed state of mind, that would be more likely to hurry them into a lunatic asylum than for them to think they were likely to lose the claims on each other and the children. On the subject of imprisonment the same thing holds good. I think in the case of embezzlement, involving a long sentence, it would be a terrible extra punishment to inflict on the prisoner.

9893. I did draw attention to the class of crime for which long sentences are pronounced. Would you apply that observation you have just made to cases such as these—indecent assaults on females or defiling young girls? It might not be possible to prove that there had been actual intercourse so as to justify divorce on the ground of adultery. But the class of offence is very near it, and I find a number of those cases have had punishment for over seven years?—I would not give divorce; I would suggest separation.

9894. Would you tell me what advantage you think there would be in giving separation? It is practically a divorce, though not an absolute dissolution of the tie?—I think it is ruinous to the national character. I think the sanctity of the marriage tie is the most valuable national asset which we possess.

9895. This is one of the points I want to get to understand, in what consists the sanctity of the tie if one person is in England and another in America, the one in America having deserted the wife in England and intending to remain in America. I want to appreciate your point and that of others as to what there is left of the sanctity of the marriage tie?—Well, if you are going to allow divorce on what I might call easy terms, how are you going to limit the number of times that a man and woman may divorce?

9896. But would you mind telling me this, as it is one of the cases felt seriously? Cases where a man or woman leave this country, goes to America, in all probability starts another home, though that cannot be proved perhaps as they cannot be traced; from your point of view, how do you regard that as a case in which divorce should be refused because of the sanctity of the marriage tie?—If he deserted her with cruelty there could be divorce under the present——

9897. No, not without adultery?—Well, my Lord, I would let the minority suffer for the sake of the majority.

9898. (*Mr. Spender.*) You say, Major Malcolm, that the greater the discomfort and the pecuniary strain on the parties, especially on the man, the fewer divorces and separations there are likely to be?—I think so.

9899. I suppose you mean discomforts and pecuniary strains on the offending parties?—That is what I do mean—as a rule on the man.

9900. You would not be in favour of leaving anomalies and injustices and difficulties merely for the sake of making divorce the more difficult?—I do not quite understand.

9901. Take the concrete case of rich and poor; assuming that the divorce law exists, you would be in favour of equalising the conditions as between the two?—I have said so.

9902. I do not quite follow that part of your evidence?—I agree with what Mr. Peacock, the Chief Constable of Manchester, said, that granted divorce remains as it is——

9903. That they should all go to the High Court?—Yes.

9904. You seem to say in one portion of your evidence that local people escape publicity in the local papers by going to the High Court. Is that your experience?—I think the average cases in the High Court are not published in the ordinary little local newspapers. The cases of the poorer classes would not be.

9905. Is it not almost invariable that the local case——?—It would depend on the social position of the parties.

9906. But it could hardly be said that they escape any publicity by coming from the locality to London?—I think they would escape a great amount of publicity. Those in the poorer ranks of life would.

9907. You would not say it was desirable in itself that they should escape publicity?—I should, with regard to any of the sordid details.

9908. But it is not an object that they should escape publicity?—No; on the contrary, I think the publicity of the names and of the very bare facts would have a deterrent effect.

9909. You say "bare facts"?—Well, anything so long as there is nothing published liable to upset the minds of youth, and morality generally.

9910. I think you said that you extend that not only to the matrimonial cases, but to police courts?—Certainly, very much to the police court cases.

9911. (*Sir George White.*) Are you in favour of adding hard labour to a case of imprisonment, of a husband who refuses to pay an order of maintenance? Do you think that would have any effect?—I hardly think so. Sentences are so short that he practically has hard labour. If it would assist to get the wife's allowance, I certainly would.

9912. But you do not think it would have that effect?—Not in a short sentence.

(*Chairman.*) Would you mind asking, Sir George, what they do in these short terms.

9913. (*Sir George White.*) Yes. What labour do they perform?—I am afraid I cannot tell you that. I do not know. I would rather not give an answer, as I cannot speak of my own knowledge.

9914. Have you any experience of these maintenance orders being paid through an officer of the court?—No, I have not, sir, but I think this, that it would be far better if it was to be as I have suggested, than that they should be ordered to be paid to the woman. I have no experience of its being paid. I believe once or twice they have been paid to the police court missionary by arrangement.

9915. Do you think it would have a material influence in getting orders paid, if they were all, as a matter of course, payable to an officer of the court?—Yes, I certainly think that would help to get them in.

9916. And I gather while you would place sexes on an equality, you think it might have some disadvantage; still, you are in favour of it in the existing state of the law?—Yes, but I foresee difficulties.

9917. Then you say with regard to separations as against divorce, that you are not in favour of divorce, because, while you admit there are a number of cases of great hardship, you say the minority must suffer for the majority. Is it really right to deprive any minority, however small that minority might be, of what is admitted to be justice, because of some imagined effects on the majority?—I would not deprive the minority of what is at present allowed by law. I am in favour, as I have said, of the poor being given facilities, but I would not broaden the law in order to include other cases.

9918. But in the case his Lordship put to you, where you admit it was a great hardship, but you were not prepared to remedy that hardship, lest the remedy should have some evil effect on the majority?—No, because I believe it is a very small minority that would be benefitted, and I think the nation would suffer.

9919. (*The Archbishop of York.*) You say, in your court, the stipendiary uses influence to prevent young people separating. Have you any figures to show in how many cases their efforts are successful?—No, I have not. I know that in Hull, not only the stipendiary, but the clerk to the justices, and even the solicitors, to say nothing of the police court missionary and the lady probation officer, are all working to try and get the parties to make up their differences and not come into court; and then I have known cases where they have been adjourned and adjourned.

*9920. You cannot give any percentage?—No, I could ask for it.

*9921. If you are sending in some other figures, perhaps you might ask for that. Then you draw a distinction between the effect of separation orders by men and women. With regard to the man as to whom you say that in many cases they take up with another woman, do you think, supposing that man was divorced by his wife, in the classes you are dealing with, he would take the trouble to enter into a formal marriage with the woman he is living with?—I do not think he would for one minute.

9922. It would practically have no effect?—No, and I do not think the woman would sue for a divorce.

9923. (*Mrs. Tennant.*) I want to ask you one or two questions on separation orders. Most witnesses have stated to us that the majority of applications are made by wives of casual labourers. Would you agree to that in your experience?—I should say casual labourers and classes of that sort.

9924. At any rate people in receipt of a low wage and often a precarious wage?—Yes.

9925. Then you say the man under the separation order is apt to form an acquaintanceship with another woman?—Yes.

9926. And we have had it in evidence from other witnesses that he does form that acquaintanceship and that there are children by that other woman. Is it not a danger to the nation that if he pays in full to the legitimate children there is very little left for his illegitimate children, and if he gives the money to the woman he is living with, and supports his illegitimate children, then the legitimate children suffer?—I think that goes without saying.

9927. Is it not a national danger that one set of children is being brought up on very inadequate means?—That is my point. I say let the man understand from the very beginning that he will have to pay his lawful wife and his legal children and he will think twice before he takes up with another woman. That is my point. That man is relying on going to prison and not paying his wife and his legitimate children.

9928. You think that could be made a really adequate deterrent?—I will not say a really adequate deterrent, but it will be a great deterrent—that I am sure of.

9929. Is it not in human nature that a man left without his wife in the working classes who needs care is likely to seek it and——?—Are you talking of the man whose wife is——

9930. Who has been separated from his wife?—Well, he can go back to her.

9931. She may not want him back; if he has been brutal to her she will not want him. I believe she may in time, but there are a certain number of wives who would not want their husbands back if they are brutal?—I think there are few who will not take their husbands back.

9932. You do not think it desirable that the wife should be exposed to the disadvantages of her husband not paying, or to the workhouse or to brutality. Those are her three choices. That is undesirable?—Very undesirable.

9933. (*Sir Lewis Dibdin.*) In that undesirable state of things that Mrs. Tennant has put to you, does it occur to you how divorce would mend matters? The case is put of a man who has two establishments. Supposing there was a divorce either the original establishment is left without support at all by him or the same state of things goes on, does it not?—That is the acme of my argument.

9934. You cannot help me to see how divorce would be any relief in that case?—I do not think it would be the least relief.

9935. It has been suggested by some of the witnesses that it would have this effect, that the divorced wife could marry again and so get another bread-winner to support the former husband's children. Do you think that is a case likely to occur very frequently amongst the poor?—It might sometimes occur, but I should think probably her first experience would stop her trying another.

9936. As a marriageable person, she would be rather handicapped by the fact that there was already a family by another man?—That is so.

* Inquiry shows no record of this kept.

9937. I wanted to ask you about your suggestion with regard to enforcing orders. Your view is that the order for maintenance should be enforced automatically as it were?—That is so.

9938. Does not that render it necessary that the maintenance should be paid through a public officer, because if it is not, I do not quite see how the court is to know that the order is not obeyed, unless the woman comes and makes a complaint?—I quite agree. I think it would be best to pay it through a public officer.

9939. Then may I take it as an addition to your plan, that the maintenance should always be paid through a public officer, and then the non-payment would be known to the authorities automatically?—Yes. I wish to add that I should deprecate taking the money from the employer of the man, because I think it might do the workman harm in his work.

9940. It was put to you just now (in reference to your statement that the minority must suffer for the majority), were you really in favour of the minority suffering the injustice for the sake of the majority. But would you put it that that rather begs the question; that your view is that it is not just that the marriage tie once formed should be dissolved under the circumstances that have been suggested?—That is my point. I put it badly, but that is what I mean.

9941. You do not admit that the minority do suffer injustice by the lack of greater facilities for divorce, though there are cases which we must all deplore.

(*Mr. Spender.*) I think I said inequality.

(*Sir Lewis Dibdin.*) It was not you. It was Sir George White.

(*Witness.*) That is what I mean. I do not wish anybody to suffer injustice.

9942. (*Sir Lewis Dibdin.*) But your point is, that for the national good it is not well that divorce facilities should be multiplied?—Certainly.

9943. But you supplement that by saying the difficulty of obtaining divorce should not be measured by the means of the parties?—Yes.

9944. That mere poverty should not be a bar to divorce?—No.

9945. (*Mr. Brierley.*) Excuse me, Major Malcolm, but I did not quite follow your proposal as to enforcing these orders. What is it you suggest?—I suggest this, sir, that when the maintenance order is made, I think it would be a very excellent suggestion that it should be paid, say, to an officer of the court. I do not suggest by that a policeman necessarily, but some officer. Then if it is not paid, say, in a month, if there is a month of arrears, then the man should be liable to be brought before the magistrate, practically arrested.

9946. So he is now?—Not until his wife has applied for a warrant, and his wife may not be ——

9947. Who do you propose should apply?—I would have no application at all.

9948. Then is it not within your experience that sometimes the wisest course the wife can adopt is not to apply to have her husband arrested? I mean with a view to her obtaining her maintenance?—It might be sometimes, but I think it might be done.

9949. Take the case where a man has succeeded in getting permanent employment after considerable interval. Would it not be disastrous to the wife's interest to have that man arrested after he had obtained employment?—I think he might be brought before the court. I might rectify that. I might say bring him before the court.

9950. Do not you think with many employers that would result in his losing his occupation?—I do not think so.

9951. Do not you know many cases where having to leave his work even on a summons it results in that?—Well, it might be arranged that he should go at some time suitable.

9952. The dinner hour, or something of that sort?—If the matter was in the hands of the officer of the court, the defendant's convenience could be consulted, but my contention is that at present the woman suffers.

9953. Yes, but take the case of the woman living in Hull and the husband in Bristol. Do I understand you to propose that the order for imprisonment should be made against the husband by the Bristol magistrates?—I say in that case there would be a commitment taken out.

9954. By whom?—Well, as the law stands at present the woman is now in Bristol, and it would be taken out ——

9955. I think you took it that way; we will say the wife in Bristol and the husband in Hull. The commitment would be taken out where?—The warrant would be taken out by the wife; she would get the warrant.

9956. In Bristol?—Yes, and the effect of that would be that they would send the warrant to Hull, and say, if you find this man, and he does not pay, arrest him; we will send a policeman for him bringing him back to Bristol, and then when he is at Bristol, if he still does not pay he will go to prisoni n Bristol.

9957. That is what is done now?—That is what is done now.

9958. I wanted to know what amendment you suggested?—Of course in this case the woman is in Bristol. Well, I suggest that it should not be necessary for her to send to Hull, but the fact that the man has not paid her—this particular woman is owed three pounds ten and something—and my suggestion is, before the sum got to that, the man should have been told: "If you do not pay you go to prison."

9959. Told by whom?—Well, by that officer of the court

9960. In Hull?—Well, he would communicate ——

9961. But do you suggest a man should be sent to prison without being confronted with what is practically the prosecutor at all, or having the case proved against him?—The case is clear; he owes the money.

9962. But there are two sides. Do not you know there have been disputes as to whether any or how much money is due?—I do not think there is very often a dispute about it.

9963. Well, not infrequently at all events?—I do not think so. It could be arranged. My contention is that if you want to stop these separations, and if you want to be fair to the woman, the man should have to pay the money under the maintenance order regularly.

9964. Without hearing him on the matter at all?—Well, she would have to give proof. You might get it that way.

9965. But he would have no opportunity of cross-examining her according to your plan at all. You would take the woman's statement as gospel?—And the officer of the court.

9966. What would he know?—If the money was being paid to the officer of the court, he must know.

9967. He might know that the man had not been paying in that case, but he could not know whether the man had been prevented by circumstances from paying, supposing he had been ill or something of that kind?—Yes, there may be difficulties I see.

9968. It frequently happens?—Yes.

9969. Supposing he had been out of work through no fault of his own, which may frequently happen?—Yes.

9970. Well, how is it possible to send the man to prison in this country without having had the case proved against him in his presence?—Well, I only make the suggestion to this Royal Commission. It is but as an outline. I think something ought to be done to see that these women get their allowances without expense and undue anxiety.

9971. (*Chairman.*) Just one question. You answered Sir Lewis Dibdin, I think, about the necessity for considering the national good. Would you just explain to me a little more of your view as to how the national good is affected in those cases which I put about a person who has gone to America. Under the existing law he has gone. The tie is, in fact, severed, though not the legal bond. Why is the national good in any way affected in those cases by saying to the party left behind: "The bond is severed in law as well as it is in fact." People do go, we have heard, and leave the country altogether. I am not sure that I follow the reason by which you say the national good will be affected by allowing the party left behind to

dissolve the tie in law as well as in fact?—I do not think I should be able to express exactly what is in my mind perhaps as I ought to, but I mean this, that I am against any weakening of the marriage tie.

9972. But the point I am on is a serious one, that the tie is already broken as the law stands by the people clearing out of the country and going away?—Yes.

9973. I have assumed that they have separated for good, and are not going to live again together. How is the national sense of marriage affected by the fact that the marriage is dissolved legally as it is in fact dissolved by their separation?—Well, I think it is, my Lord.

9974. (*The Archbishop of York.*) Might I put the Chairman's question to you in this way, Major Malcolm. Do you think that if divorce was granted in that single admittedly hard case which the Chairman puts to you, and those grounds were recognised as grounds for divorce—publicly and explicitly recognised—it would tend to lower and lessen the general conception of the responsibility of marriage?—Yes, that is what I mean. I could not have put it so well into words, but that is what I mean.

9975. (*Chairman.*) I agree; but how would it affect that which already exists as the law stands? Perhaps it is a matter for argument?——

9976. (*Sir Lewis Dibdin.*) The Chairman is looking at the particular case, and you are looking at the general case?—I am talking of the nation.

(*Chairman.*) Thank you very much for your evidence, Major Malcolm.

Adjourned until Monday morning at 10.30.

Winchester House, St. James's Square, London, S.W.

FIFTEENTH DAY.

Monday, 21st March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. GEORGE SMITH called and examined.

9977. (*Chairman.*) I believe you attend here at the request of the East London Credit Drapers' Association?—I do.

9978. You have come here in consequence of some evidence which has been given, and you wish to make some observations on behalf of your association?—That is so.

9979. Will you actually tell us what it is that you desire to say? We thought that the association should have an opportunity of coming if it so desired?—The East London Credit Drapers' Association nominated me to appear here and to protest against a statement made by Judge Steavenson. That statement was published in the papers on March 2nd, and I think in a letter which was sent you on behalf of the association we quoted the words to which we take exception.

9980. That letter has been before the Commissioners?—Yes. The words we specially take exception to are these, namely, "The persons called 'tally-men,'" and, further, that "Women buy goods from tally-men, "and the tally-man makes suggestions to them and "offers to remit the debt if they consent." Your question to the witness, according to the evidence published, was this: "You have come across these "cases yourself," and the answer was, "I have come "across them absolutely, and I was so shocked to "hear it that I went to my bailiffs and asked them, "and they told me it was quite common." That is a very serious statement, a statement that has carried something like dismay into the whole of the members of my association. I have been a credit draper in the East End of London for 29 years, and I have spent the whole of my time amongst the working classes. I do not know of any case or any proceedings in the police court that would bear this interpretation; I do not know of any proceedings in the Divorce Court that would bear a similar interpretation, not even as a matter of gossip. Again, we complain of these words for another reason. After all, our capital is very loosely invested, I mean we are credit drapers, and to bring a charge of this kind against us I am certain will mean that we shall lose materially. Further, the next point I wish to bring is this, that if the statement were true would it not have been well on Judge Steavenson's part to have tendered evidence of that kind before the Special Committee of the House of Commons which sat last year hearing evidence on county court procedure and county court reform? I think altogether 23 witnesses were examined before that Committee, and none of them made any allusion of the kind similar to that made by his Honour Judge Steavenson. Now, working men representatives were examined by that Committee, and it seems to me knowledge of this kind, which he asserts is quite common, should be in the possession of some of those men who gave evidence, and could there be a stronger argument given before that Select Committee than what Judge Steavenson here alleges? Again, I would wish to tell the Commission that the status of the credit draper, or of his travellers, does not warrant such a serious moral aspersion being cast on his character. After all, a credit draper or his traveller is in possession of a round worth 700*l.* or 800*l.*, and before he is selected to look after and to collect money due on accounts on that round some inquiry is made into his character, for the very reason that he has the handling of that money, and therefore we do not take or select anyone who comes along; we make inquiries, and so I think that altogether our status is misunderstood. The members of my society, and I entirely agree with them, believe that anyone who lent himself to such conduct as is alleged in the statement by his Honour Judge Steavenson would speedily get into trouble, and the reflection here made on the women of the working classes is unjust and undeserved. I have a further request to make which I hope will be considered, namely, that we trust the members of this Royal Commission when they issue their report will

see fit, if possible, to strike out the words we complain of. That, I think, covers all my statement.

9981. I have not, unfortunately, got Judge Steavenson's evidence before me at the moment, and I have not a print of that evidence, but speaking entirely from mere recollection I do not remember his specifying any particular association or any particular class of person to whom those observations of his were directed?—If you wish, I can read the statement that appeared in the "Daily Telegraph"; I have it here.

9982. Just tell me what you have got. I do not remember any reference to the Drapers' Association?—The evidence is headed, "The temptation of women." "Mrs. Tennant said evidence had been given with "reference to special temptations to which men were "subjected, and asked if there no special temptations "to which women were exposed. Judge Steavenson: "I am sorry to say it has come to my knowledge "personally, more than once, that the persons called "'tally-men,' who sell goods in the homes of the "people, and almost force the poor to buy, and who "collect their debts from week to week, do expose "women to the most serious temptation that they can "be exposed to. Women buy goods from these tally-"men, and get into debt to the tally-man. They are "afraid to let their husbands know, and the tally-man "makes suggestions to them and offers to remit the "debt if they consent. That is a terrible position for "a woman to be placed in. The Chairman: You have "come across these cases yourself? I have come "across them absolutely, and I was so shocked to "hear it that I went to my bailiffs and asked them, "and they told me it was quite common." That is the report that appeared in the "Daily Telegraph."

9983. I daresay that may be right; I have not got the shorthand note to check it with at present, but does that refer in any way to the drapers?—It can refer to no one else than the credit draper.

9984. Does your association travel in the north?—Yes, we have an organisation which covers the whole of England.

9985. You quite understand we cannot try here, as a Commission, an issue. We receive the evidence that is presented; we can only hear what is said before us?—Yes.

9986. Is it possible that some instances might have come before the witness which have not been brought to your attention?—I should think that it must be exceedingly rare, so rare that an eminent man was not justified in making an aspersion of this kind which will apply to innocent people. It is that which we complain of. The statement is made in a general way as if it was common, and it is really the most serious statement that a trader can trade under. I think you will agree with me there.

9987. Of course we desired, when you communicated with us, that you should have the opportunity of presenting your association's view. I do not know that we can carry it any further. Perhaps, Mr. Brierley, you would see fit to ask some question?

(*Mr. Brierley.*) No, my Lord.

9988. (*Judge Tindal Atkinson.*) Some of the travellers have to travel in very remote districts right away in the country?—That must be so.

9989. You cannot always keep a check on them?—No.

9990. I do not know of any case in my districts where it has happened, but it is possible it may happen and not be capable of being detected?—I will not say it has not happened, but here is a statement which would make anyone who reads it think that it was quite common. What is a working man to think of a statement of that kind?

9991. (*Chairman.*) Do you mean by that that it was too broad a statement, although in some cases it may have happened?—I am not going to say that it has not happened; anything may happen. I know of no case, and my experience is large.

9992. We will take your statement as it now stands, as you have made it?—Yes.

9993. We have afforded you such opportunity as we can of dealing with it. Whatever is the issue, we cannot try it; we can only receive the evidence which is presented to us?—Yes.

9994. There might possibly have been some instances which have not come before your notice. I have the shorthand note now; we shall be able to read it, and also what you have said?—When you make your report I should like to have this struck out if you can. I should like you to remember that.

(*Chairman.*) We quite appreciate your position.

Sir WILLIAM COBBETT called and examined.

9995. (*Chairman.*) You are a solicitor of the Supreme Court, and have been admitted some 42 years?—Yes.

9996. You are senior partner of Cobbett, Wheeler, and Cobbett, and practise at 49, Spring Gardens, Manchester?—Yes.

9997. Your practice has always been general in character, and amongst other things you practise in the Divorce Court Division of the High Court, in the county courts, and before the justices in petty sessions?—Yes.

9998. May I take it your firm is one of the leading firms in Manchester?—I hope it is, my Lord. We have been established a long time.

9999. You have been deputed by the Manchester Incorporated Law Association to attend and give evidence before this Commission on their behalf?—That is so.

10,000. I think you formed one of the Lord Chancellor's Committee to inquire into the administration of justice a year or two ago?—Yes, I had the honour of serving on that Committee.

10,001. With regard to the present state of things in trying divorce cases in London; will you give us the views you wish to present on behalf of your association?—I think the expense of trying divorce cases in London, even undefended cases, is such as to exclude from the benefit of the law on the subject, not only many of the working classes, but some of the poorer middle class.

10,002. That is to say, a stratum just above what you call the ordinary working class?—Yes; for instance, clerks of some grades. I have never known an undefended divorce case tried for less than 40*l.* The cheapest I ever remember cost 40*l.*, and I think what other witnesses have said about the general average of cost is correct, that 50*l.* may be considered to be the usual average cost of an undefended divorce case where you have the average number of witnesses to bring up from the country.

10,003. And that cost, I think, is partly in consequence of the employment of London agents as well as the local solicitor, and bringing the witnesses to London?—Yes.

10,004. The general effect of conducting proceedings at a distance from where the persons have access to the court?—Yes.

10,005. What is the result of that, in your experience?—I find the result is that people give up the idea of commencing divorce proceedings or proceedings for a judicial separation. They turn their minds to solving the difficulty that has presented itself in some other way.

10,006. In what way do you find that that is done?—Well, the parties separate and take their chance. It very often happens in the case of the husband desiring a divorce that the position with regard to expenses is aggravated by the fact that he has to give security for or pay a sum of money into court to meet the wife's cost. That one provision, to my knowledge, has prevented a great number of petitions which otherwise would have been presented and brought to hearing.

10,007. That is to say, 50*l.* is only when it is undefended?—Yes.

10,008. And when it is defended you get into questions of security for costs and payment for both sides?—Yes.

10,009. Do you think this position of things leads to immorality?—Yes, I think it does. I think so, particularly amongst the two classes I have indicated; perhaps more particularly amongst the working classes, generally so called, than amongst the other classes.

10,010. We have had a great deal of evidence about the simple wage-earning class (the labourer); but your evidence goes partly to the position of those a class above that?—Yes.

10,011. Some clerks, and so on?—Yes.

10,012. You think there is really a grievance there?—I do.

10,013. Have you met with it to an extent which enables you to give us any idea as to whether it is general?—I could not give you any statistics, because, my business being a private business, there is no object in keeping statistics, and I have not recourse to papers that would enable me to furnish them reliably.

10,014. But have you any notion whether it is limited to individual cases?—No, I do not think it is limited to individual cases. I think there are a substantial number of cases where it is important to have recourse to the remedies the court provides.

10,015. In both the classes you have mentioned?—Yes.

10,016. You go on to specify, in the proof you have sent us, certain consequences you have mentioned?—Yes.

10,017. Would you tell us what you find?—Well, I have known at least two cases where a man and a woman have committed bigamy as the direct consequence of the man being unable to obtain a divorce.

10,018. You mean he has married some one else and faced the risk?—Yes; the woman refused to live with him unless she had what she called her "marriage lines" to produce.

10,019. You say here: "The consequence is that a "man whose wife has left him to live in adultery with "another man, either lives with another woman "without attempting to conceal the relations existing "between them, or takes a housekeeper to live in his "house, which usually means the same thing"?—Yes.

10,020. Has that kind of case come before your knowledge?—Yes; and not a single instance, but there are many instances.

10,021. And then you proceed to give the instance of bigamy which you have just mentioned?—Yes; those two cases were cases in which the woman refused to live with the man unless he went through a form of marriage with her, and he took his risk.

10,022. Then you proceed to take the case of women left by their husbands?—Yes.

10,023. You say as to that: "I do not think the "same state of things obtains to the same extent, but "it certainly does in many cases"?—Yes; I think there is a substantial difference in the number, but I still think there are a substantial number of cases where the same thing happens.

10,024. Where the woman is the complainant?—Yes; but I think there is a substantial difference, you know.

10,025. More frequently when the man is the complainant?—Yes.

10,026. That has led you to state in your proof that you think there should be some change in the law?—Yes.

10,027. Would you tell us what the remedies you suggest are?—I think you did call attention to the fact that I am stating the views of the association of which I am a member. Their view—and I agree with it—is that if divorces and judicial separations could be tried before a judge of the High Court on circuit, that would be the best remedy. I do not quite agree with Mr. Pickstone that the cost would be as much as he thinks it would be.

10,028. I should like to follow that out a little. Would you permit the proceedings to proceed in one of the local registries?—Yes.

10,029. For instance, Manchester has practically everything they require—a bar and a registry and solicitors all handy?—Yes.

10,030. How would that meet the case of persons who were at some distance from that registry?—Well, I think in most counties where assizes are held there is a registry, and nowadays the means of transit by rail and tram are so ——

10,031. I ask you, because it is suggested that even if parties could go to a local registry of the High Court, that would still involve them in the difficulties of getting to it from places at some distance; whereas if they could go to the county court registry, they could have them more readily accessible?—I was not asked to suggest, but feel inclined to suggest that, rather than allow things to remain as they are, I should much prefer jurisdiction should be given to the county court.

10,032. Then that comes to be a question of the best way of applying the remedy?—Yes.

10,033. Would you attach the importance that some do to the trial in the High Court, or would you be satisfied if the trial took place in the county court?—If it were practicable I should prefer that the trial took place before a judge of the High Court; but if that is found not to be practicable for various reasons, then I should prefer infinitely that jurisdiction should be given to the county court rather than that things should remain as they are. May I follow on what I was saying about the transit?

10,034. Yes?—We find that in the ordinary assize cases—common juries and so forth—the witnesses get down the same morning and get home the same evening, as a rule.

10,035. Of course, Lancashire has great railway facilities?—Of course I am probably thinking more of my own county than more rural counties.

10,036. I think we had an instance given by some county court judge that it was as difficult to get from parts of the county to the central assizes as it was to get to London. Dorsetshire, if I remember aright?—I am afraid my experience does not enable me to realise those difficulties as they would be realised by some solicitors or a county court judge from a rural county. With us the difficulty would not exist; the transit is very cheap and very quick, and witnesses would get to the assize town as quickly as to the county court.

10,037. You have had considerable experience of the county courts, I understand from what you say?—Yes.

10,038. Well, we have had objections made, not on the question of distance, but to any county court judge dealing with these matters, because there might be a difference of opinion amongst the county court judges and so on. Assume it was found not practicable to work the system by a High Court judge or on assizes, would you see any objection to entrusting this jurisdiction to the county court judges in limited cases?—Not at all. County court judges now try cases of equal importance and equal difficulty. For instance, take the bankruptcy jurisdiction. They try questions involving property worth thousands of pounds in cases, that may go on appeal as far as the House of Lords; I am talking of bankruptcy proceedings in particular, and they have, as no one knows better than yourself, under a great variety of Acts of Parliament, a very wide and important jurisdiction, quite apart from what I may call the small debt jurisdiction. The court has ceased to be a small debt court only.

10,039. Looking at these courts in 1910, you do not find the same sort of thing as you would in 1846?—No; the Legislature has, by degrees, added enormously to the jurisdiction of the county court beyond their jurisdiction to deal with small debts; that has become only *part* of their jurisdiction, but, I admit, an important part. There are days set apart in our own court when judgment summonses and small debt cases are heard; on the other days the larger litigation business of the court is done.

10,040. Would you see any difficulty in assigning days for taking these divorce cases, if necessary?—Not at all.

10,041. Passing to the assize question again. You suggest a variation in the scale of cost in some way so as to reduce them to a county court level?—That is if divorce business were done on circuit.

10,042. Yes?—Yes.

10,043. You say then: "In cases where the district "registrar is satisfied on affidavit that the income and "property of the parties are below a certain level, the "costs to be allowed, whether as between party and "party, or solicitor and client, should be on a scale "approximating to the county court scale, and in such "cases no court fee should be charged." That is the remedy you would apply in order to provide for this business at the assizes?—Yes. That, of course, does not apply to the county court.

10,044. No; it is approximated to the county court?—Yes.

10,045. That exhausts what you want to say about the courts?—May I say this in addition, my Lord. I should very strongly oppose the suggestion that statements in the nature of depositions and papers of that kind should be taken in the registry, or in the country, and sent up to be dealt with in London. In that way the parties would lose a benefit which is a very great benefit. The judge sees and hears both the parties themselves and their witnesses, and I think that is indispensable, particularly in cases of this character.

10,045*a*. I think that pretty well exhausts what you have to say about the courts?—Yes.

10,046. May I take it generally you feel satisfied, from your experience, that something must be done to give the people you speak of an opportunity of bringing their cases to the court?—I am quite satisfied.

10,047. And do you say there is a real demand for that?—I think there is; I think there are people who have felt the grievance—and a substantial number—very acutely.

10,048. Then the next point you deal with in your proof is the orders under the Summary Jurisdiction Act. Will you tell us what you have to say about that, Sir William?—I should be very sorry to see that jurisdiction cease. I think it is a remedial jurisdiction which has been of very great benefit.

10,049. Are there any points connected with it upon which you wish to make any observation?—I and those with whom I am associated in Manchester think that, where the hearing of that class of case is left to lay magistrates alone, they are apt to treat it too much as a question of providing for the maintenance of the wives, and that they do not take care in the first instance that there is established beyond question a case under the Act—that is a case of desertion or a case of persistent cruelty, as the case may be.

10,050. They rather seek to make provision than to deal with the Act strictly?—I think if they think the wife has a grievance they are rather apt to make a separation with a provision for her without ascertaining that the grievance is that which the Act provides as being the one enabling them to make the order.

10,051. Would your view be that a legal mind ought always to be brought to bear on those cases?—I think it would be a distinct improvement.

10,052. Do you think at present, where the lay magistrates sit, they grant these orders too readily?—Yes, I think so. I do not mean that all the magistrates do not discriminate, because in the proof before you I have mentioned cases in which they show great unwillingness to make an order without further considering the matter. For instance, in the case of young people, where the parties on both sides are quite young, or have only been married a short time, I have found that lay magistrates have considered the matter very carefully indeed and have been very unwilling to make an order without giving the parties the opportunity of reconsidering the position, and seeing if they could arrange to come together again; and I have known them go, in some cases, as far as to refuse to make an order on that ground alone, which I suppose is not a legitimate ground. But I think their action in that respect has been a beneficial action on the whole; it is not an action I am at all disposed to criticise.

10,053. There has latterly been a distinction between making an order for separation and for maintenance?—Yes, it was a judgment of your Lordship's, I think, that pointed that out. It did not seem to be realised in the courts in which I practised at first, at any rate, but I think it is generally recognised now and is acted upon.

10,054. Do you think it would be desirable to require the orders in the first instance, when made by magistrates, to be limited in time. Suggestions have been made that it might be desirable that the magistrates should only make an order for separation temporarily, and not make permanent orders, and possibly might have a power to rescind the order if they think there was a reasonable ground for doing it?—Of course, there is a power of rescission.

10,055. That apparently is not exercised merely because a man says he has reformed and would like to come back?—No.

10,056. It seems to be on the ground of fresh matter coming up that would have effected the original order?—Well, the parties can always come together again if they choose. I do not see any advantage in making an order for a limited time, but it might be an advantage if the magistrate had power to make a kind of interim order, that is to say, an order that the husband should contribute to his wife's maintenance only for so long and adjourn the case for that time, and then bring it up for final decision.

10,057. That suggestion has also been made?—That is sometimes, in fact, done, but then the parties must agree, and they often do agree.

10,058. It might be that the magistrates should have power to make an order for payment and adjourn the application for separation?—Yes, I should prefer that myself to making a limited order, because, if you once get the actual order made, it seems to me to give rise to difficulties.

10,059. I do not know that there is anything more in this point, except in cases of divorce you suggest that the decrees nisi and absolute should be gazetted so that they would be publicly announced?—Yes.

10,060. That leads me to ask you with regard to the publication of reports. What is the view in Manchester about that?—We think they ought not to be published, that is to say, we do not think the details ought to be published.

10,061. And you would publish the fact of the case and the result?—Yes.

10,062. What are the grounds that have led to that view?—We think the details which are published do harm; they are read by a very great variety of people, and they do harm. They produce a bad effect on the minds of the readers, especially on some classes of readers.

10,063. It is said that the publication of the whole story in detail is a deterrent to the committing of the act. Would you regard that as so?—I should think it is; so, I should think also, would be the publication of the proceedings; the names of the parties and the judgment.

10,064. Do you consider that the publication in the public interests being harmful, as you say, is greater than the advantage that may be derived from the point of view of the possible deterrent?—Yes; especially if you retain the publication of the proceedings, and the result and the names of the parties.

10,065. Then you wish the word "cruelty" to be more clearly defined, I understand?—Yes. I do not say it is not defined by such cases as Russell *v.* Russell, and others; but if the definition given in those cases could be crystallised, it would be a considerable guide to those who have to administer this branch of the law.

10,066. I think what you say is in fact covered by the present state of the law?—I agree.

10,067. You say: "The word 'cruelty' should be "clearly defined to include mental torture injurious to "health, even without actual physical cruelty"?—I believe that to be the law already according to the cases I have mentioned.

10,068. But you would like to see it crystallised into a definition?—Yes; because I know one bench of magistrates who did not take any notice of cruelty of that sort. They said, "We do not trouble about "that; we want——"

10,069. Some blows?—Yes, something more substantial.

10,070. I suppose you think in these nervous sort of days we live in the torture may be as great without actual physical violence?—I think even a person with the strongest nerves may be so treated without actual blows as to be worried into his or her grave.

10,071. One other point on cruelty. Do you consider that the words "persistent cruelty" are satisfactory?—Yes, I think they are; because I consider there is rather an inclination in trivial cases to treat that as cruelty which is not persistent, or not persistent in the way the Act meant.

10,072. But it is suggested that a six months' limit is not desirable, and that it ought to be extended so as to cover a longer period. At present the acts must be within six months?—I suppose that is to bring it into line with the Summary Jurisdiction Act.

10,073. You mean in the Summary Jurisdiction Act the line is six months?—Yes.

10,074. It is said that rather shuts out cases in which, perhaps, a good many acts are prior to the six months, and confines it to only one after or within the six months. Have you any views to express as to the possible extension of the six months to a longer period?—It is generally held that it is necessary to prove some act within the six months, and then you may give the events of the whole married life with reference to cruelty.

10,075. Yes?—If there has been an absolute cesser of cruelty during the last six months it would hardly be a case that would be likely to succeed.

10,076. You do not see any advantage in extending that six months back?—No, unless there is no limit at all, and even then the courts would probably require some recent act of cruelty, or else would hold that it had been condoned.

10,077. (*Mr. Brierley.*) Just one word about that last point. The period of six months runs, does it not, from the time when the wife leaves the husband?—Yes.

10,078. It is not really necessary, is it, that the acts of cruelty should have taken place within the six months?—Well, I said yes, but I am not quite clear that it is so. Must not the acts of cruelty be within six months before the application for the summons?

10,079. I rather fancy the cause of action is that she has been compelled to leave her husband in consequence of his cruelty?—Yes.

10,080. Well, the summons has to be brought, I think, within six months of the time when she leaves?—Yes.

10,081. Do you think there is really any hardship on the wife in being compelled to apply to the court within six months, if she has left the husband in consequence of his cruelty?—No, I do not think so. She ought to move promptly.

10,082. There is one point I want to ask you, which you have not given in evidence, but I see it on your proof. Assuming these cases of separation cannot be tried by a stipendiary magistrate, are you in favour of their being transferred to the county courts?—I should prefer, at any rate, that the magistrates should have concurrent jurisdiction.

10,083. I rather understood so, but what you say in your proof, unless the cases could be tried by stipendiary magistrates you thought they ought to be determined by a judge of the county court?—I think that is the conclusion that the committee of my association came to. For myself I should not be prepared to go as far as that.

10,084. Bearing in mind that the courts of summary jurisdiction are many and stipendiary magistrates are few?—And also the courts of summary jurisdiction are much more numerous than county courts and sit much oftener. You can get your case on much quicker before a court of summary jurisdiction than before a county court.

10,085. Then personally you are in favour of the court of summary jurisdiction retaining that power?—I should not like the litigants to lose the tribunal because it is a tribunal called into play very quickly, and I know in some of the county courts you do not get on for a month and some for six months.

10,086. (*Judge Tindal Atkinson.*) At Manchester you are fortunate at the assizes, I think, in having always two judges to sit?—Well, lately we have what are called sittings for civil business instead of the assizes, and that means two judges for part of the time.

10,087. As you are aware, in other parts—more agricultural parts—only one judge sits at the assize town?—Yes.

10,088. And it makes it more difficult for him to regulate his time so as to be sure he can try divorce cases?—Oh! I recognise there might be substantial difficulties in deciding to send the country divorce cases for trial on circuit.

10,089. (*Chairman.*) Would you mind asking him how many assizes Manchester has. There are four, I understand?—Yes; and lately, of course, the courts have been sitting practically continuously for civil business.

10,090. And therefore there is almost always a judge at Manchester?—Or Liverpool.

10,091. (*Judge Tindal Atkinson.*) With reference to the district registry, I do not know whether your society has considered the question with reference to the country districts. I have one of the largest districts, and there is 800,000 population in my jurisdiction, and there is one district registry in the whole circuit, and you would recognise that it would make it impracticable for the district registrars to do this work on circuits like that. The district registry, for instance, is in Colchester, and my jurisdiction goes to Hertford, and if a person at Hertford wants to commence proceedings, it would involve the employment of an agent in Colchester. If that is the state of things throughout the country, would not you recognise that there is a difficulty with regard to the poor people commencing their proceedings in the district registry?—I hope I have not been misunderstood about poor people; I have not been speaking of people who ought to have help as being unable to find any money for their litigation; the people I am talking of are people who can find money, but cannot find money to conduct divorce cases in London; such people would find a certain amount of money. I recognise the great difficulties you suggest with regard to Colchester, but do not the registries do business through the post? I am inclined to think they do.

10,092. Yes, a man can commence his proceedings through the post?—The proceedings are delivered through the post, and so on. It is not always necessary to employ an agent in the town in which the registry is. But Hertford is very near London and Colchester the same, is it not?

10,093. Supposing a man wished to conduct his case in person, and cannot employ a solicitor, in that case he could get a clerk at the registry to assist him to fill up a form, or whatever it was. That could not be done by post?—No, but he would probably get someone at home to fill up the form and send it through the post to the registry.

10,094. I do not quite understand why there should be any real difficulty in getting to the nearest county court office—whether the registrar or clerk. Why should it be necessary to go to the district registrar, who is the High Court registrar and the county court registrar in one?—Well, if the county court registry could do the business connected with the trial of divorce cases, at the assizes, I should see no objection. That is only a detail, is it not?

10,095. Well, then, with regard to the trial at the assizes, and the expense. Mr. Musgrave, who was the taxing master for the Divorce Division of the High Court, says, when asked this question: "Taking it "roughly, what is the ordinary average cost of an "undefended case in London?—That I cannot give "as an average, because they vary so extremely. They "go from 80*l.* up to 300*l.* or 400*l.*" ——

(*Sir Lewis Dibdin.*) That is defended, is it not?

(*Judge Tindal Atkinson.*) No, undefended. "But "can you give anything like an approximate minimum? "—The minimum might be very slightly in excess of "—in undefended cases—about 50*l.*, I should say."

10,096. Now, that is a London case. Now, if that is the minimum cost of a London case—50*l.*—is it not

practically prohibitive with regard to a man with poor means getting to the assizes?—I do not agree that is the minimum cost of a case in London, even if you bring the case from the country. I know a case that was done for 40*l.* I know the people came from a place in Durham called Fighting Cocks—a station called Fighting Cocks. They had to come from Durham to London, and the whole thing was put through for 40*l.* It happened they had only to remain in London one day, and there was no opposition of any sort or kind. The witnesses were not people who were expensive to bring; and it went through for 40*l.*; so I should say there must be plenty go through for 50*l.*, even country cases.

10,097. That is the average given by the taxing master?—Well, he must have means of knowing, which I have not; I only speak from my own experience.

10,098. Have you practised in county courts?—Yes.

10,099. For how many years?—The whole 42 down to the present day.

10,100. So you have considerable experience in county courts?—Yes.

10,101. There is one question I should like to ask you. As to the jurisdiction; supposing the county courts have jurisdiction; are you of opinion that the cases should, if the parties desire it, be tried by juries?—Well, I should say the general practice of a county court is not to try with a jury.

10,102. I quite agree; but in your opinion should the parties have a right to a jury if they wished it?—Yes, I think so.

10,103. Then with reference to damages in divorces. Do you see any objection to giving an injured party a right to damages if it is tried in the county court?—It is proposed, of course, to limit the amount.

10,104. Oh, yes, quite?—Then the probability is that the damages would not be recovered. My inclination would be not to give a right to recover damages; not in the class of cases tried there; and I think it would turn out in practice, except in very exceptional cases, nobody would ever get them.

10,105. But I do not understand why, if a man has been injured in a bad case by the act of the co-respondent, having a right to damages in the High Court, he should not have them in the county court?—I do not think, logically, there is any reason; but all the same, though it may be illogical, I should not give him a right to recover damages in the county court. It is to be a limited jurisdiction, and if there is a co-respondent who is likely to be able to pay damages (and if it is a question of damages, one would assume they would be substantial damages, because you would not give a man 40*s.* or 5*l.*—that would be rather ludicrous), I think if it is a case where substantial damages are sought to be recovered, somehow or other parties ought to be able to try in the High Court in the ordinary way.

10,106. Then with regard to maintenance orders. In some of these cases, in your opinion, would not the parties be better off where the separation is practically for life, with a divorce rather than a separation order?—Do you mean dealing only with cases of cruelty and desertion?

10,107. Yes?—No, I do not think they would. At any rate, I would not be disposed to extend the jurisdiction in that direction.

10,108. I should like you to consider this. There has been some evidence given with reference to the way in which reconciliation is brought about between parties after a separation order has been made; in many cases the parties are reconciled for what we may call economic reasons; that is to say, the man cannot support himself and his wife separately, and the wife has to come back to the husband sometimes to get the means of livelihood. In that case it cannot be a very happy reconcilement. Can you imagine cases in which a woman may be living in constant dread and fear of her husband, yet having to live with him? Would it not be better in such a case as that that she should get a divorce at once?—A divorce, of course, would leave her at liberty to marry again, certainly; but it would turn her out upon the world, probably, having lost the trade she had previously carried on by disuse, or being severed from it for a considerable time without anything to live upon. I think the remedy would be a doubtful one.

10,109. Well, you do not agree?—I have not considered it as it deserves to be considered. I should not like to say absolutely that I do not agree with it, but I am not prepared to deal with it at the moment. It seems to me it might be found a very considerable economic difficulty. You might have a woman turned on to the world without anything to maintain her unless she happened to marry again.

10,110. One appreciates living together like that must be most miserable and wretched?—Yes, and I have known cases where it was so, and that very often brings them back to the court again.

10,111. (*Sir Lewis Dibdin.*) I take your general view to be that the law requires reform so as to place the existing divorce facilities which the rich have into the possession of the poor?—Yes, the poorer.

10,112. That is the governing view of your evidence?—Yes.

10,113. And if it can be managed you would prefer to have these cases tried by a High Court judge rather than by a county court judge?—Yes.

10,114. Have you considered Mr. Justice Bargrave Deane's suggestion, which is not the assizes, but that one of the judges of the Probate Division should go down from time to time, either one of the existing staff or an additional judge appointed to that division, to hear the cases locally?—I have not considered it. I read Mr. Justice Bargrave Deane's evidence, but I do not remember that I noticed that particular suggestion, but it is one to which I take no objection.

10,115. It would meet your preference for a High Court judge without some of the difficulties we all see with regard to the assizes?—Yes, I should think it would. The difficulty, I suppose, would be to supply the judge.

10,116. (*Lord Guthrie.*) You said the cheapest case you had known of a divorce case in London was 40*l.* Would you give me an idea roughly how that would be divided between, first, solicitors and counsel; second, court fees; and, third, witnesses' charges; very roughly?—I am afraid I could not do much more than guess.

10,117. (*Chairman.*) Have you got the bill for it?—The bill of costs in the particular case?

10,118. Yes?—No, I have not. It is a long time ago, and I do not suppose that particular bill is in existence, or any record of it. I recollect the case very well. I should think that probably the witnesses would mean 15*l.*

10,119. (*Lord Guthrie.*) And the court fees?—The court fees I cannot estimate; but the balance, deducting 15*l.*, I should say would be divided between the counsel, solicitor, and court, and I should think the fee on the brief was not more than, perhaps, three and one or about that.

10,120. Instead of such an amount what do you think would be a reasonable sum to expect—say a man like the clerk that you have mentioned—to pay for such an important step?—Well, he probably could find 20*l.*; perhaps he could find rather more; say 25*l.*

10,121. Then would not you contemplate making any provision for those who are of the poorer classes?—Of course, they are provided for at present by the right to sue *in formâ pauperis*; and there is, in our town at least, one organisation which has what is called a poor man's lawyer department; and solicitors are nominated by their own consent to act in turn as advisers, and in that way the people who are not able to find any money get advice, and their cases are sometimes conducted for them free of charge; and I believe the charity pays the court fees.

10,122. If some such system as that could be extended, I suppose it is very desirable in all such cases that the court should have legal assistance rather than the parties appearing in person?—Yes, I think so; particularly in this class of case. I do not think there is much difficulty experienced by poor people in getting legal assistance, as a rule, if there is any merit in their case. It is the speculative class of case where it is doubtful what the merits are where

they do not get help; and I do not see that there is any particular reason why they should be helped in those cases, because it is a class of litigation which is perhaps as well left alone.

10,123. At the present moment, if a poor person in a country town in England wants to sue for a divorce in London, there is no means by which they can have professional assistance in London free of charge?—That I do not know about. I am not aware that the particular class of assistance I am alluding to has been extended to proceedings in the Divorce Court, now I come to think of it, but more with reference to other classes of cases.

10,124. Suppose, Sir Wilfiam, a High Court judge went down to Manchester for this purpose, or that the trial was at the assizes, would you propose to limit the right of audience to barristers?—Certainly; if at assizes I should not extend it at all.

10,125. Or if a High Court judge went down to try divorce cases would you, or would you not, open it to solicitors?—No; where solicitors have no audience at present, I should not claim it for them; but if jurisdiction were given to the county court I should say leave solicitors as they are with regard to the county court, *i.e.*, they should have audience. A case can be conducted on cheaper lines if there is no necessity to employ counsel, than if there is the necessity; for the obvious reason that if you do the work by two men you must pay more for it than if you do it by one.

10,126. Then if local jurisdiction was given in whatever form, you would propose to confine the remedies to persons below a certain income?—Yes; I have not formulated how the income should be arrived at, but a pecuniary limit of some kind or other.

10,127. Have you any idea as to a limit?—I should say if the earnings of the husband, for instance, did not exceed 3*l.* a week.

10,128. (*Chairman.*) One question on this matter of costs. Speaking of the undefended cases, the costs we have heard might be 40*l.* or 50*l.*, as you have just indicated; but there is always this difficulty, is there not, that the case may be defended?—Yes.

10,129. And it might be defended where there was no real defence?—Yes.

10,130. And that naturally means that the costs must be incurred by the husband for both sides?—Yes, and security for costs, or money paid into court to cover the costs of the wife. I think I have already said that has stopped numberless petitions.

10,131. So that, although an undefended case might be got through if the man could save up 40*l.* or 50*l.*, if it is a defended case you find yourself with a much more serious difficulty?—It probably stops then upon an application by the wife for security for her costs.

10,132. Stops the case altogether?—Yes.

10,133. I notice you did not in your proof deal at all with the question of other grounds of divorce. If you do not wish to go into that I will not ask you?—I am quite ready, personally, to answer any question on the subject, but the society I belong to considered it was a matter of public policy outside its purview.

10,134. Then shall we leave it where it is, unless you wish, yourself, to add anything personally?—I only wish to say this; that I, personally, am in favour of placing women on an equality with men with regard to the grounds of divorce; and I do think they ought to be extended to cases of incurable lunacy, and imprisonment of either party for certain classes of criminal offences extending beyond a particular term.

10,135. Have you any view about mere desertion over a long period?—I think that ought to form sufficient ground.

10,136. Do you find cases in Manchester in which the husband or wife disappears to the colonies or America, or some other part?—Yes.

10,137. That is a common case?—Yes, and a great many of the cases of bigamy arise out of that class of desertion.

(*Chairman.*) I ought to thank you on behalf of the Commissioners for your coming and giving evidence.

Mr. ARTHUR WILLEY called and examined.

10,138. Are you a solicitor practising in Leeds?—Yes.

10,139. And you have so practised for 20 years?—Yes.

10,140. Has a large portion of your work been advocacy work in the courts?—It has.

10,141. You have made a speciality of that somewhat?—Yes.

10,142. And may I take it you have had hundreds of defended and undefended divorce cases and applications for judicial separations?—Yes.

10,143. And you have had the conduct of a large number of cases each year under the Married Women's Act of 1895?—A very large number.

10,144. Are you of opinion that changes are necessary with regard to these two matters—separation and divorce?—Yes.

10,145. Are you a member of the committee of the Incorporated Leeds Law Society?—I am.

10,146. I think you represent that committee here to-day?—Yes, and their views.

10,147. Would you tell me what the number of members is?—I think we have 90 to 100 members. The committee consists of about 14.

10,148. What do you say on the first point as to whether some facilities should be given for hearing divorce cases in the country?—We say, my Lord, that experience shows it is absolutely necessary to have some other method of getting relief for people who have not the necessary means to come to London.

10,149. May I take it the main difficulty is expense?—The main difficulty.

10,150. And also difficulties about getting away?—And getting away. I have a case now in the divorce list.

10,151. You mean the divorce list in London?—Yes. I think there are five or six witnesses here; they came up with one of my clerks last Monday night. Owing to a pure fortuity the case was one behind a case that has lasted all the week, and my client's means were exhausted the second day, and the London agents had to finance the witnesses, and they have had to go back, and will have to come back again to-night, and probably it will not last more than two hours when it is heard.

10,152. Is that a defended case?—Yes; and that is an ever-continuing difficulty.

10,153. Then about undefended cases, and the cost of them?—I think the cases are very few and far between where it is only 40*l.* as Sir William Cobbett said.

10,154. He said he only knew of one?—I have found on an average it is at least 58*l.*

10,155. An ordinary undefended case?—An ordinary undefended case, yes, involving the most simple proof—where a man has been living with a woman, and the proof is quite simple.

10,156. What makes the costs so heavy in these cases?—Well, there are the agent's costs; then the court costs are about 6*l.*; and the principal witness in a case such as I have indicated is perhaps a house agent, so I would say the witnesses' expenses would be over 20*l.*; and I calculate the profit costs of the country solicitor in an undefended case never exceeds more than 10*l.* or 12*l.*, and counsel generally get five and one. I do not know that in an undefended case they will take less than that. Therefore my figures come out at about 60*l.*

10,157. May I take it that is on the basis of a large number of cases?—Yes, a very large number of undefended cases, but, as your Lordship pointed out to Sir William, the great drawback is—and my experience in a very large proportion of cases is so—in cases which are eventually undefended they are fought up to a certain point, and you inevitably get the costs which have to be paid up to trial; you have

to pay those out, which generally amount to about 25*l.* or 30*l.*

10,158. Let me ask you on that. When the case is defended up to the point you have mentioned, what do you find the average cost is then?—In addition to the amount I have named of 58*l.* to 60*l.*, the average taxed cost of what we call costs up to trial which have to be paid in cash, generally are taxed at about 25*l.*, and they are only purely problematical. They are on a guess of the Master on an *ex parte* application.

10,159. Those are the costs for the wife defending the case up to trial?—Yes.

10,160. And she can always do that if she puts in a defence?—Yes, and a very large number of undefended cases involve that difficulty.

10,161. They are defended up to a certain point, you mean?—Yes, a woman goes to a solicitor, and she deceives the solicitor, and then he files a denial, and afterwards he finds there is no real answer, but the husband has to pay all the costs up to trial, and I say the average cost of a case of that kind is something like 80*l.* to 90*l.*, and it is an insuperable difficulty in a large number of cases.

10,162. If there is no security given, what happens then? The case is stopped?—If the husband is the petitioner he is barred at once. It automatically stops his procedure. If the wife is the petitioner she can go on.

10,163. If she can find the money?—If she can find the money, and she has no remedy whatever for the recovery of the money except the ordinary civil remedy.

10,164. She could get an order for costs against her husband if she succeeded?—Yes, my Lord, but with regard to the enforcing of it, if he has not anything it is abortive.

10,165. The result in practice works out in your view as making it, for a certain class of people, impossible to get their cases taken?—Absolutely, and I divide them into two classes—the very poor classes with 1*l.* or 30*s.* a week, of whom there are thousands in my city, and the better class alluded to by Sir William Cobbett with from 3*l.* to 10*l.* a week even, and I say some facilities should be given.

10,166. In addition to what you have been saying, have you met with cases where there is a real desire to get a decree, and the people are unable to do it?—A very large number. I was looking, for the purpose of giving this evidence, and I was certainly consulted in at least 30 different cases last year where people at any rate at first inquiry had fairly reasonable grounds of proving their case, and it could not go on.

10,167. It has been suggested that among some of these classes there is no real demand for the facilities suggested. Would you tell us what you find in fact about that?—It is not my experience at all, my Lord. My experience rather is that when there has been an act of infidelity there is a great desire, and I am at issue rather with the learned stipendiary of our city. I do not think there is that element of forgiveness. His is the only evidence I have read, as I did not want to distort my evidence by reading it all.

10,168. I rather thought that was confined to the poorest classes that go before the magistrates?—Well, my Lord, that may be, and I think there is a class that looks upon these acts with a loose sort of eye; their surroundings and bringing up and their whole social position involve a lack of idea of propriety; that is my experience.

10,169. In many cases they go to the police courts?—Yes, the very lowest classes.

10,170. Would your view be that amongst them there is not much demand for facilities?—I should agree to that.

10,171. But a little above that there is?—Undoubtedly.

10,172. People who come to solicitors, and cannot then afford to get the money?—Yes, the respectable working man, if one may say so.

10,173. Do the facilities *in formâ pauperis* help?—Not a bit.

10,174. Why?—My opinion is the method of getting it is somewhat cumbrous, in this sense, that a good deal of formality has to be gone through involving expense, and the procedure has always appeared to us to be somewhat anomalous. You have to satisfy the court that the party desiring relief has not got, say, more than 30*s.* a week, but before he can do that he has to instruct a solicitor and probably put his hand in his pocket, and also get counsel's opinion on his case.

10,175. That he has a *primâ facie* case?—That he has a *primâ facie* case, and therefore his first step involves expense. It is not a suit *in formâ pauperis* really because it costs too much, in my opinion. I have only had about three persons ask about it, and I have advised my clients it was really in effect very little relief.

10,176. They get off the court fees?—Yes.

10,177. Well, what is the remedy for this?—My colleagues and I suggest three alternatives, but we are all pretty well of the opinion that the first one is the right one, namely, that the county court judges should have jurisdiction. The second one would be what I would call matrimonial judges to go on circuit; and, thirdly, to give the ordinary judges on assize jurisdiction.

10,178. You have said you and colleagues prefer the first. What is the reason?—Well, in Yorkshire we are peculiarly situated. We only have two circuit towns—Leeds and York; and we have a number of registries, Bradford, Sheffield, Hull, Halifax, and so on; all those large towns have registries; but the advantage of the county court in Yorkshire would be that every person would have a fairly easy method of getting to the venue—to the place for trial.

10,179. You have been advocate, I think you said, in a great many county courts?—A large number.

10,180. Would you anticipate in this particular class of practice any serious difficulty in one county court judge taking one view, and another another?—Not the slightest. I indicate that that could be the only possible objection, but I do not agree with it at all.

10,181. Well, why?—I think, as Sir William has said, the county court judges have had increased jurisdiction for a number of years, and have had matters with regard to Admiralty, ecclesiastical law, and bankruptcy referred to them now, and I think, if I may say so, they would deal admirably with this class of litigation.

10,182. Have you found that the issues raised in these small magisterial separation and divorce cases before the judge present any serious difficulties?—Not the slightest.

10,183. The issues are simple?—The issues are simple; in fact, I think they are rather more involved under the Married Women's Act of 1895. I think very often the issues under that Act of Parliament tried by the stipendiary and the lay magistrates are far more difficult than the ordinary run of simple divorce cases.

10,184. Then you go on to discuss in your proof the various advantages of the one system as against the other. Can you summarise that in your own way?—I am strongly of opinion, and my colleagues agree, that the county court is infinitely the best place, for this reason: the whole machinery is there ready to do the work. The registries could not do the work as at present constituted.

10,185. The High Court registries?—The High Court registries. It would involve a good deal of new creations, and I think the question of distances would be a great objection to the circuits. For instance, in Yorkshire some of our people have a distance of 100 miles to come to Leeds; and the same difficulty arises as in London; we are in the list and have to be there, and we are not wanted, perhaps; whereas in the county court there would be a local knowledge of the case, and a better means of speaking to the officials as to the possible length of time the case would take, and all the elements of knowing whether it was a long or short case would be at hand. And then the great question of fees; it seems to me it would be jumping out of the frying pan into the fire, unless there was a very great reduction in the present High Court scale of fees, because in ordinary assize cases the counsel we instruct cost as much as in a divorce case, and therefore you are

not going to get to the root of this unquestionable evil.

10,186. Would that apply if there was a judge of the High Court taking the divorce work?—I do not think it would if the scale of costs and all the elements of expense were reduced to the ordinary county court scale.

10,187. That would be putting it really on the county court footing?—It would. It would only be a question of a specially appointed judge instead of a county court judge.

10,188. Going on to page 4 of your proof, you say if the local courts were given jurisdiction there would still be some difficulty?—I mean there would have to be some alleviation of the husband's position as to this security for costs, and I think in the poorer class of case there ought unquestionably to be, after some inquiry by an official as to the righteousness of the cause some assistance given out of the public purse.

10,189. So that he should not have to pay the costs of the wife, you mean?—Yes.

10190. His own costs you would leave?—Yes, if his costs were fixed at 10*l.* or 15*l.*, or at the most 20*l.*, he ought to pay those out of his own pocket.

10,191. And if he has to meet the costs because she is his wife, and getting nothing but what he was providing, you think the public funds should provide it?—Yes, and I think it could be easily worked. I think inquiry could be made by the registrar, or some official, as to the soundness of the case of the man's financial position.

10,192. And what the wife's real case was?—Yes.

10,193. That is only when it was desired to have a defence at all that this would be necessary?—Yes.

10,194. Now you agree, I think, with most of those who have been before us, that there should be some limit on the class of case that is taken in the county courts?—Yes.

10,195. Have you at all thought that out?—I had originally in my proof, before my colleagues discussed it with me, 3*l.* a week, but there was some difference of opinion. However, there was a unanimity of opinion that it ought to be somewhere between 3*l.* and 5*l.*; that it should not be extended to a man whose income was beyond 5*l.* a week.

10,196. Then if he could show he had under 5*l.*?—He should be entitled to the jurisdiction.

10,197. How would you meet the case where a man, even of a better class in life, had that amount of income, but a rich wife?—I should not suggest any differentiation in those cases.

10,198. You would leave it the judge to order the case to be transferred, if he thought it right?—I think that would, at any rate, meet an obvious difficulty, the judge having discretion to transfer a case on the application of the other party.

10,199. Where such a case as that arose?—Where such a case as that arose.

10,200. Would you concede that?—I should.

10,201. Now you have drawn a conclusion generally. Would you tell us in your own way what your conclusion is?—My conclusion is that the inability for people of this class to get relief on reasonable terms has led in a very large number of cases to adulterous lives being lived, and even if not adulterous lives being lived, the husband changing his course of life from what probably had been a fairly reasonable life to a dissolute drunken life. I have found that in a large number of cases.

10,202. With regard to the adulterous life; is that speaking from personal knowledge, or is it only surmise?—No; from actual knowledge and experience.

10,203. And if those people could have obtained a divorce you mean that would not have occurred?—That is so; when I say "personal knowledge," I mean this—I think it is illustrated by this fact, I have had a very very large number of applications under the Act of 1895 to discharge orders by the husband on the ground of the wife's infidelity, and very often arising in cases where the wife has had a family, and she probably has not found her alimony sufficient, and she has had to go and keep house for a man. That is a significant class of case.

10,204. I am not sure whether Leeds is one of the places we have had the figures from, but, speaking generally, the number of applications successfully made to rescind orders seems to be very small?—I think I may account for that, and I think I may, with respect, agree that in at least one court in Leeds these matters have to be very strictly proved. The learned stipendiary magistrate who appeared here has a procedure with which I am in entire accord. He will not discharge an order on the ground of adultery not only without the strictest proof but without the co-respondent, as I may call him, being there; and what Mr. Atkinson thinks, and what I think, as to that is that it is not right to discharge an order on the ground of adultery with a third party who is not a party to the proceedings and is not before the court, and our practice is that that man is subpœnaed and treated as a witness and allowed to go into the box.

10,205. Do you mean the smallness of the number of those orders being rescinded is because of the difficulty in establishing the adultery?—I do.

10,206. And you say you have had a number of applications yourself?—Yes.

10,207. Are those applications where you have found a difficulty in the proof?—Yes, because you see the difficulty is this, very often you have to rely upon the evidence of the children. One does not like to put children in the box, but when there they either side very strongly with the father or the mother, but the difficulty of proof is that the explanation is: "I cannot "live on the alimony; I must keep the house; but we "have three rooms, and I sleep with the children." Then the neighbours say: "Well, these people go out "together, and go to the music hall together, and "they are living under the same roof"; but in those cases it is difficult to draw the deduction that necessarily there has been misconduct.

10,208. What leads you to say it is so in fact, then?—I have known of numbers of cases where I have not agreed with the deduction that has been drawn that there has been misconduct, because I believe the necessities of the position have put the people in the position of living under the same roof, but without misconduct.

10,209. Now you have given us here the number of cases heard under the Act of 1895. We will take that as part of your evidence, if we may. It shall be copied afterwards?—If your Lordship pleases.

10,210. 1909 is the last you give. Can you tell us whether in 1909 that 288 figure is orders in which separations were made?—In four-fifths of the cases. Now we only ask for maintenance orders.

10,211. That figure is much lower than the previous year, I see, and some of the other years, though not lower than 1907. Can you tell us whether the 288 are cases in which orders for separation were granted, or does it include orders in which there was only maintenance?—Oh, there are a considerable number of separation orders, but I should say, speaking roughly, the percentage of maintenance orders out of the 288, since the decision which we all welcomed, is probably 60 per cent. of them at least.

10,212. Only maintenance?—Only maintenance orders.

10,213. Does that figure 288 include the two classes?—Yes.

10,214. One in which there is maintenance only?—Yes.

10,215. And the other in which both separation and maintenance are ordered?—Yes.

10,216. Where do you take that 288 from?—The official figures from the magistrate's clerk's office.

(*Lord Guthrie.*) Then the top line of page 5 is not quite correct, Lord Gorell?

(*Witness.*) That is a clerical error.

10,217. (*Chairman.*) What is the error?—It should be maintenance orders as distinguished from separations, I was going to correct that.

(*The following is the table referred to, and put in by the witness.*)

In Leeds the following are the numbers of the cases under the Married Women's Act which have been tried, viz.:—

——	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
No. of summonses issued on application for orders.	197	242	217	241	289	349	398	444	424	422	431	339	375	354
No. of orders made - -	142	184	163	200	221	264	318	344	324	338	329	268	315	288

10,218. Then you go on to say, "A very generous "construction has been placed on the Act of Parlia- "ment in most of the courts in which I have practised." What does that mean?—Well, I think too small an amount of evidence, say under the persistent cruelty clause, has been regarded as sufficient; also the evidence as to desertion has been in some of the courts rather generously construed.

10,219. Do you agree with Sir William Cobbett's view that the magistrates have rather leaned to providing for the wife?—I entirely agree with it. I should like to say that I do not agree if Sir William drew any distinction between the learned stipendiaries and the lay magistrates who are, in my city at all events, advised by two gentlemen of the most ripe experience. There is this inclination in all these cases for the magistrate to rather assume—the wife says she does not want to live with her husband, and she gives some evidence—that they are better apart, and she had better have something towards her livelihood. Then it leads to a great deal of collusion.

10,220. It is rather a matter of machinery?—Yes.

10,221. What do you mean with regard to the collusion?—What I say is this, and it is a very striking thing. When the husband and wife, at any rate for the moment, think themselves they cannot hit it and get on, it daily happens that the wife simply says: "My husband has deserted me"; and the husband is there: "Do you agree to this order?" "Yes"; and the order is made. Well, I say in a large number of instances that is a collusive arrangement, and I say that is proved by the very large number of cases where women come for the second, third, fourth, and I think I cite a case where a woman had no less than five orders in three years.

10,222. They come together again?—They come together again, and they separate again.

10,223. What is the remedy for that?—The remedy is that no woman, in my opinion, should have a second order for separation, or maintenance either, under a statutory period from the first one of—my colleagues thought 12 months, but I think two years. It is a solemn step, and I do not think the woman should have relief unless she strictly proves her case. I also think that in the husband's interest. It gives him a chance of——

10,224. Well, you think they treat it very lightly?—Yes.

10,225. And yet get what might be permanent separation orders, thinking they can put an end to them directly?—Exactly. All the people in our court are asked if they desire a separation or maintenance order, after proving their case.

10,226. Is there any other remedy except an interval between the orders that you suggest?—I see no other remedy, but I should make it a statutory limit. I should not leave it as it now is. Some magistrates refuse to give a second order at all.

10,227. Then you say you think there are one or two other matters in which the Act requires amendment?—Yes; I say very often the object of this Act is defeated by the inability of the wife to enforce the order. She cannot enforce the order under a month from the making of it, and my experience is that that inability has led the wife to go to the union, and it gives the husband an opportunity of getting away.

10,228. Would you cut it down to seven days?—Yes, to the very most. It defeats the object of this Act in a large number of cases. It gives him a month, in the working man's case, to go to another part of the country, or to clear out of the country altogether, and the wife and children have to starve in the interim.

10,229. Do you meet with cases in Leeds where the husband does disappear to the American side of the world or to other towns in this country?—They itinerate to other towns. Work is more or less easy to get, and the man loses his identity.

10,230. Do you find cases in which they never do come back?—Yes, I do; but I find numbers of cases (which I deal with a little later on, but probably I might say something about it now) where the wife has been left under those circumstances with an order which is not worth the paper it is written on as far as getting anything from the husband is concerned, and she is eventually driven into keeping house and probably living an adulterous life. Not that the husband is entitled to much sympathy in many cases, but if he turns up thinking he is going to make up the differences, he cannot get any relief if his wife is living in adultery until he has paid all the arrears, and the magistrates have no discretion, but they are bound to submit if the wife presses it. Therefore, I should suggest, where the husband is not as much to blame in some as in other cases, the court should have jurisdiction to date the discharge of that order from the moment the adulterous life has begun.

10,231. You would not make him wipe out all the arrears?—No. I had a case a little while ago where the arrears were nearly 100*l.* The wife lived in glaringly open adultery. The husband's explanation was that he had gone away to get work, and had succeeded, and then could not find his wife. The wife came to the court originally, and if she had said he had gone to get work she would not have got the order. Then the husband turned up, and took out a summons to discharge the order, but he was face to face with this liability, and the magistrates would not hear him unless he made arrangements to pay it. Eventually, this man paid 20*l.* down and promised another 20*l.* by instalments.

10,232. You would let the magistrates have power to cancel the order from the date of the adultery?—I should.

10,233. In these desertion cases do the magistrates, in fact, act on the evidence of the wife alone?—In desertion cases, yes. My experience is—I will not say this about the stipendiary magistrates—that there is very often an inclination to distinguish between the necessity of corroboration in the persistent cruelty cases and the corroboration in the desertion cases. There is no statutory obligation in either case. But my experience is one never succeeds in a persistent cruelty case without corroboration; where, if the wife says she has been turned out or told to go, that story is accepted; it is quite wrong, of course.

10,234. Well, you said the case you mentioned was where the husband said he had really gone to find work?—Yes.

10,235. And yet she had sworn, I suppose, that he had deserted her?—Yes.

10,236. And there was no corroboration?—Yes, and my experience is, it is never asked for in those cases.

10,237. Do you think it should be?—I do. I think the wife's case on any one of the four grounds—particularly aggravated assault, unless there are some obvious marks of violence—should be corroborated.

11,238. And that is equally so with regard to desertion?—Certainly.

10,239. The point you have passed in your proof is about extending the power to deal with alimony. There is 2*l.* a week now, and you say you would increase that?—I think that maximum ought to be raised. I think there ought to be power to grant alimony up to

at least 4*l.* a week. At present, as the law is, very often there is a case where a man has 8*l.* or 10*l.* a week; there is a pretty large family, four or five children. The wife has not means, nor has the wife means enough to take proceedings for judicial separation in London, and the result is she is driven to the local court and has to accept the maximum there.

10,240. What class of people are you thinking of?—Well, managers of shops, and commercial travellers, and managing clerks to solicitors, if some of them are fortunate enough to get ——

10,241. What sort of incomes are you putting it at?—Well, 250*l.* or 300*l.* a year. A man with 5*l.* a week with a wife and five or six children ought to be treated in accordance with that position. 2*l.* a week in such a case, particularly where the wife may be an ill person, or the children young and she has to look after them, is quite inadequate. The husband has 3*l.* for himself, and the wife and six or four children have to live on 2*l.*, and the general bringing up and education of the children is neglected, and they are not brought up on the standard they should be.

10,242. And the wife has not the means to bring a judicial separation in the High Court?—Yes, and what would appeal to your Lordship at once would be this, that there are grounds under the Act here which probably she could not apply with regard to in London. I mean the woman could not get a judicial separation in London, as I read it, on the ground of aggravated assault only.

10,243. Nor of desertion unless two years had run?—No.

10,244. And there is nothing to be done in the meantime?—Exactly.

10,245. Do you think this is a matter that requires really serious consideration?—Yes, I think it has been a most beneficial Act——

10,246. But do you think this increasing of the limit is a necessary step?—Yes, I think it would meet with a very crying demand now—cases where the wife has to take 2*l.*

10,247. Then I think you pass on to deal with cases of habitual drunkards?—All I say with regard to that is that I think the wife should be entitled to a separation on the ground of her husband being an habitual drunkard.

10,248. That is so now?—The husband, my Lord, is the person who asks now.

10,249. Yes, but the wife can; they both can?—I have found, as a rule, a very stringent construction is put on the words "habitual drunkards," to which I take exception.

10,250. But it is applicable to both sides?—Yes, but I think there should be a withdrawal of the word "habitual."

10,251. The definition is too strict, you mean?—Yes.

10,252. Have you thought out what ought to be the definition?—I think there are cases where a man can be an habitual drunkard without making himself a danger to himself in the broad sense of the word, or a danger to those surrounding him. I think a man can be an absolutely impossible husband owing to his intempérance without drinking to such an extent as to make himself dangerous to himself or anybody else. As a rule, a man like that accompanies his drink with very late hours and utter neglect of all domestic duties, and uses horrible and objectionable language.

10,253. Do you think in the interests of the children this requires amendment?—Yes, to say nothing of the wife—that the wife should be entitled to a separation on those grounds. They do not amount to legal cruelty, but they are just as bad, in fact.

10,254. Something between habitual drunkenness and the definition of cruelty?—Yes. I had a case only last week of a tailor who, as far as his wife knew, had not committed adultery. He had supplied his wife with any amount of money. In fact, he seemed to think the way of making up differences caused through getting drunk every night in the week and coming home at two in the morning, and using abominable language, was, in a sober moment, to generously give his wife a considerable sum of money. He made life unbearable, and the children were very nice children; but the wife had no remedy. She had to grin and bear it. I wrote and asked if he would agree to a separation, and he said: "No, my wife has "all she wants."

10,255. You think this is not much used by the husband?—No, it is not. He is not bound to live with his wife, and if he keeps her voluntarily he is foolish to ask for an order, the disobedience of which might end in his being sent to gaol. He is better off without availing himself of it.

10,256. Passing from that point to proceed to questions of divorce; have your association considered this question of divorce for a wife on the ground of adultery alone by the husband?—My Lord, I put it in its baldness there. I do consider, and my association considered, that it is extremely probable that the Commission did not desire opinions from me or from my society on questions more or less of public policy, but this statement met with the approbation of all the members, and it is—but I am rather instructed, and it is my inclination not to go further into it—I think a wife should have divorce on the ground of the husband's adultery; but nothing more than that.

10,257. Then you pass to the question of appeal under the Act of 1895?—Well, I feel one has put up with the vagaries of all kinds of magistrates, and many of the magistrates lose sight of the legal effects of their judgments because of sympathy or sentiment. There is no appeal except to the Probate Court, and then only on a point of law.

10,258. Is that so?—Well, I think your Lordships have rather demurred to interfering with such cases. In all these cases it is rather difficult to differentiate between an actual point of law and a point of fact.

10,259. I only demur to your stating it because I am under the impression that an appeal lies on the facts also?—I have a distinct recollection of what I thought was an important case from Wakefield, and your Lordship and your colleague dismissed the appeal on the ground that the magistrates had seen the witnesses.

10,260. But that is not necessarily saying there is not an appeal on the question of facts, but rather that the facts unless there is some clear miscarriage could hardly be investigated over again when the magistrates had seen the witnesses. I think there is a difference between this and the ordinary county court cases?—Oh, yes, I agree. But I think there ought to be some better means of appeal. It costs a considerable sum.

10,261. But what is the suggestion?—The suggestion is you ought to have some appeal, if the jurisdiction is given, to the county court judge or to some matrimonial officer sent on circuit. The appeal should be to them.

10,262. To whom?—From the justices to the county court judge if he gets this jurisdiction—or whoever gets the local jurisdiction.

10,263. You mean if a county court judge, or a judge coming from the High Court, takes the divorce work locally that the appeal from the magistrates might be taken before one or other of those?—Yes.

10,264. At much less expense than coming to London?—Yes.

10,265. Then you have a point as to some improvement in the law when there has been a separation by deed or consent?—Yes.

10,266. What is your point there?—The point there, my Lord, is that in a very large number of cases the husband and the wife as I say here, in a moment of irritability or incompatability of temper, agree to separate. They divide the home, and if they do not get on under the arrangement, the wife sees she has made a foolish arrangement and issues a summons, and she is barred from any remedy under this Act because there is an agreement to separate. There is no cessation of cohabitation against the will of one of the parties. I also make this point with regard to when deeds have been drawn up. People come—both sides come to you—and if you are discreet, you send for another solicitor and explain the whole thing, and people go with their minds adamant on a separation. In a month's time the wife wants to go back, or the

husband thinks he has allowed her too much, and the wife has no remedy because of that deed, and she has to sue for every instalment.

10,267. You would allow her to resort to the magistrate at once?—Yes, and leave it to the magistrate to say whether or not relief should be given to either party.

10,268. Would that apply to cases where the deed had not been complied with by nonpayment?—That would be the first significant class of case; and the other is where there is an alteration in the means of either party. The husband may possibly get a situation with another 2*l.* a week; or he may lose his work, or the wife may have some left her.

10,269. And they are still tied by the deed?—Yes.

10,270. You would give power to vary the deed?—I should certainly give power under the Act of Parliament to deal with all those cases, or I should knock on the head the clause that prevents the justices going behind the agreement of the parties.

10,271. If there is separation by consent there is no desertion now?—Yes.

10,272. How would you deal with that?—In the same way. A large number of parties do not come to a solicitor; they say, "We cannot hit it; you take "this and I will take that," and very often they divide the home and the children and go their separate ways. Then the husband does not keep his payments up, or his wife is not working, or a hundred reasons, and he stops, and if they admit it, and say, "We agreed to separate," they have no remedy under this.

10,273. Would you allow an application to return?—Yes.

10,274. Or an application for payment to come before the magistrate?—Yes, and I should adopt the High Court system of restitution or something of that kind.

10,275. Then you have dealt with the next point that the person charged with adultery on an application should be made a party?—Yes.

10,276. Would you have the three parties brought before the court?—I should.

10,277. The next is the matter of publication. Have your association come to any conclusion about that?—There was a unanimity of opinion on that, that they ought not to be published. I have given some reasons here from a public point of view — the demoralising effect on the reader, particularly young people, and as I say frequently the names and incidents, particularly the names, are apt to get a lot of people into trouble, and I think wrong conclusions are put upon the facts. In a number of cases one knows how generous the public are to criticise. They see a man named in connection with a divorce case, and though he is immune from any fault, still some mud will stick, and the great objection we have—that is not put here at all—is that the publication of these cases prevents in many cases justice being done; or in other words there is a reluctance of course by persons to be dragged into divorce suits—even witnesses; and perfectly respectable ladies and gentlemen may be material witnesses to material facts justifying relief being given to a party; the mere fact that their names are going to be connected with, and publicly connected with a case makes them say, "I do not know anything "about it." I have had that time after time in my experience. A woman has said, "Mrs. So-and-so will "say this," and I have gone or sent a clerk, and she has said, "I do not know anything about it," though I have been satisfied she did; and I have had husbands imploring me not to drag their wives into it; not that she is to blame, but because they do not want to be mixed up with it. I think if you have the names and the addresses of all the parties that is all that is necessary.

10,278. Would you allow cases to be tried in camera; they might still object otherwise?—I should not go so far as that. I think they would object still perhaps, but it would only be local evidence.

10,279. And also caricatures or sketches in court. Do those occur in the country?—Yes. The local press do report divorce cases without caricatures, but only the local cases where there are notorieties or celebrities or particularly spicy details, but the bulk are not reported at all.

10,280. Then you summarise it by saying that the objection is that matrimonial cases are not reported because of their general interest, but because of their particular character?—Yes, I mean the particular facts of the case involving going into, say, spicy details, or some extraordinary details; the ordinary run of cases are not reported.

10,281. What is the item "Subject number 4." I do not know what that refers to?—That is rather repetition, I think.

10,282. You think there are superfluous interlocutory matters?—Yes.

10,283. And you give some instances?—Yes.

10,284. And the scale of costs you think should be remedied?—Yes.

10,285. The item of retainer for counsel is not wanted and the local registrar might deal with matters of alimony *pendente lite* because they would have the parties or any witness before them?—Yes; I say that because I have known of so many cases where injustice has been done on pure paper.

10,286. If the local court had jurisdiction it would not matter?—But even in the present state of affairs, I think those inquiries should be *vivâ voce*. Now the people have to come to London, but at present the master usually guesses. He has nothing before him but the papers.

10,287. What is the next point?—I think there ought to be one scale; there ought to be no difference between solicitor and client and party and party costs for the husband to pay. At present the husband has the costs to pay. He pays the costs as taxed; he then gets a bill in from the wife's solicitors of what is supposed to be solicitor and client costs on the top of the taxation in London. I do not agree with that at all.

10,288. You mean if he has got them from the co-respondent?—Yes.

10,289. He still has more to pay?—He still has more to pay.

10,290. Well, that is a general grievance throughout the question of costs?—Yes.

10,291. Is there anything else except what you have told us?—No. The last point deals with the case where one acts for the co-respondent and the respondent either owing to lack of means or the position of the husband, will not go on; that respondent therefore is not before the court. The co-respondent is, and defends. I think she ought to be before the court, and I think if she cannot be before the court at the cost of the husband, she ought to be at the public expense before the court, because I could never see how a court could deal satisfactorily with an issue——

10,292. Where she chooses to leave the co-respondent to fight alone?—Yes.

10,293. But he could bring her?—But then she is not bound to answer the questions. That is a flaw in the law of evidence. I think there ought to be power to bring the wife, who says, "I am not defending," for any reasons, collusive, or a hundred reasons; in the eyes of the jury it is always prejudicial that the co-respondent is there and not the respondent—and I suggest that the wife should be made to come, her expense being provided out of the public purse, and that in law she be made to give evidence.

10,294. Having regard to the answer you gave about the mere expression of opinion as to a wife's position being placed on the same footing as the husband's, I do not know whether you want to be asked any questions about extension of grounds of divorce?—No, I should rather it was left there, my Lord.

10,295. (*Mr. Spender.*) One question with regard to publication. It has been stated to us by more than one witness that the publication of evidence was important from the point of view of checking perjury. Would you attach any weight to that?—I should not at all.

10,296. You do not think witnesses would be less likely to tell the truth?—I do not. I think the disadvantage far outweighs the slight possibility of that.

10,297. You think it is only a slight possibility?—I do.

10,298. I suppose you would agree that general consideration applies to a good many more cases than matrimonial cases. If you are taking it merely on the ground of public morality——?—Yes, there are a large number of that class of cases you would apply it to as well.

10,299. (*Sir George White.*) In the earlier part of your evidence you started with giving an interesting case in which the witnesses were brought up last Monday, and, as I understand, you had a couple of days' expenses in hand which were exhausted on Tuesday?—Yes.

10,300. Was this a defended or undefended case?—Oh, defended. I am for the respondent, and I have about four or five witnesses. I got my costs paid up to trial, and got security on the ordinary basis that the witnesses would probably be one day coming and one day here, and that was put at, I think, 25*l.* That was all exhausted in 48 hours, and then there are three more days' expenses to pay, the return fares, and the return fares back here again, and if it were not for the fact that the courts will rise on Wednesday, I suppose we might be here another week.

10,301. Then what is your position with regard to costs?—Well, I shall have to run the two risks here. The wife has exhausted her means. I shall first have the risk to run, if I lose my case, of the judge allowing me to have my costs on the ground of merit; and if I get my costs, if I am successful, or get them in the discretion of the judge, I shall have to run a risk of the husband being able to pay them; which I think is very doubtful in this particular case.

10,302. Is this a case of poor people?—Yes, the alimony *pendente lite* is 10*s.* or 15*s.* a week. That indicates the position of the parties.

10,303. Is this in consequence of the overcrowding of the courts?—No. I think it is unavoidable as at at present. Nobody knows how long a case is going to last unless eminent counsel are in it and there is a good deal of notoriety. But in this case the Master or nobody else would know if the case would last a week or an hour.

10,304. And that presents a very great obstacle to the poorer classes getting their cases heard?—It is a risk that we solicitors keep carrying on, and we run the risk really.

10,305. Then I think you gave evidence that the average undefended case cost about 60*l.*?—That is my experience.

10,306. And the case defended up to trial about 25*l.* more?—Yes.

10,307. Then it is clearly absolutely prohibitive for the poorer classes?—Yes, and if her husband has her costs to pay on the top of that, it cannot be done under 100*l.*, and never has been, in my opinion.

10,308. (*Chairman.*) You mean in undefended cases?—Yes.

10,309. (*Sir George White.*) It is practically prohibitive to a clerk, say, of 200*l.* a year?—Yes; I say the people who ought to be relieved are the very poorest class and the class you are referring to now.

10,310. Then you say you had over 30 applications to you last year with regard to divorces which were not carried any further?—Yes, I say, consulted where there was an obvious chance of a divorce.

10,311. Then you would not agree with your stipendiary that there are perhaps 10 or 20 cases in the whole of Leeds out of the poorer clases that have separation orders that would go for divorce if they had the opportunity?—I should not disagree with it in its baldness. It does not include the cases I am referring to. My 25 or 30 cases are cases where there has not been a dispute in the police court at all, but where the parties have not been perhaps living together for some time.

10,312. (*Chairman.*) I think the magistrate was referring to that class of case that came before him?—Yes, but mine includes the class of case that has not gone before him.

10,313. (*Sir George White.*) But the general current of your evidence led me to suppose that you did not think the cases amongst the poor classes were so extremely few. The stipendiary said he considered not one in a hundred of the cases that came for separation before the magistrates would apply for a divorce, even if the financial difficulties were removed?—If his Worship means the class his Lordship in the Chair asked me about, namely, the very poor class, I quite agree; but if it includes the better class working man and the clerk, I entirely disagree with him.

10,314. I think the separation cases, in my experience, would come between the two. Of course a very large number of them come from the very poorest?—Yes.

10,315. But there are a good many of the artisan class who have the same difficulty and apply for separations; consequently, to say one in a hundred seems to me to be extremely limiting——?—Yes, of course I do not agree with it if it means the larger class, but I am inclined to agree that in the case of the very poorest it is very few where it would make any difference.

10,316. Then you think under the existing jurisdiction separation orders are granted too easily?—I do.

10,317. Then with regard to another point. You stated you considered there should be some alteration where the husband has a complaint against his wife who has a maintenance order against him, and he has to pay up the arrears before he can get relief?—Yes.

10,318. Is it not fair to assume that in many cases his refusal or his not paying under the maintenance order has perhaps conduced to his wife's misconduct?—I quite agree, but you are penalising a man when you ought not to do it. Two blacks do not make one white; the wife has been living in adultery, and because the man has behaved badly to his wife there is no reason why you should penalise him.

10,319. But if you give him relief in every case——?—I do not say every case. I say there should be discretion given to the court to date back the discharge of the order, and there are a number of cases where the magistrates would say: "You have driven this woman "on to the streets."

10,320. There was one other point only which I did not quite follow. You say in the case of an habitual drunken wife the husband very seldom applies for relief?—Very seldom.

10,321. And you rather justified him because the remedy would be worse than his present condition?—Absolutely. What I mean is that the husband is not bound to live with his wife now. He could leave her on any ground, but he would probably leave her if she were a drunkard, and the result is he would allow her such a sum as would be commensurate with his own income and her safety with regard to having too much to spend on drink. If he asks for an order for separation he gets a piece of paper which involves him, or might involve him, in great difficulty, because if he is ill or his means have changed, that is enforceable by the wife, and generally would be enforced by the drunken wife.

10,322. Take the case that is fairly common from my own experience, where the wife is constantly drunk if she can by any possibility get the means to get drink, and she will sell the things out of her house if there is anything available to turn into cash. In what condition is the husband if he does not get a separation?—He could leave her.

10,323. But he leaves her with the children?—He takes the children with him as a rule in most cases and closes the house, and gives the landlord notice that he will not longer be responsible for the rent, and very often brings the woman to her senses by that. If he does not succeed in bringing her to her senses she is locked up for being drunk probably, and all the facts are brought before the court: or she goes to the union. I was chairman of the guardians for seven years, and we used to put the woman in the house, and if we were satisfied she was a drunkard of this character we would make a reasonable order on the husband of three or four shillings a week and keep the woman there.

10,324. And do you consider leaving her and taking the children away and going into lodgings or something of that kind is a better remedy than getting a

separation?—I do; because he is bringing upon himself responsibilities he need not bring.

10,325. (*Chairman.*) Do you suggest any remedy in the law applicable to that, or do you leave it where it is?—I would suggest the word "habitual" should be left out.

10,326. You have said that; but on the point Sir George has just put to you, you are only stating the position, without suggesting any alterations?—I think it is superfluous, and I think it is putting an ignorant man in a difficult position. A man comes and says: "I want a separation from my wife"; and I say, "You "do not want one; the law of the land allows you to "go where you like and do what you like, as long as "you keep your wife."

10,327. (*Mr. Burt.*) Just one matter on which I want to be clear. You quite recognise that the poorer classes are practically excluded from an appeal to the Higher Court, and you suggest local courts?—Yes.

10,328. And giving county courts jurisdiction in these cases?—Yes.

10,329. The point I want to clear up is this. In your proof here, on page 4, you say you think "a limit "should be fixed as to the persons entitled to apply "for relief at such local courts, and I would suggest "that before a suitor could claim the advantage of a "local hearing he should satisfy the court on oath, "in some preliminary way, that his means are under "a certain amount, or that his income does not exceed "a certain sum." Am I correct in understanding you to say that personally you would fix that sum at 3*l.* a week?—3*l.* to 5*l.* My own personal opinion is 5*l.*; but there was a slight difference of opinion amongst my colleagues, but a unanimity of opinion that it should be between 3*l.* and 5*l.*

10,330. Now you say 5*l.* is the maximum?—I do.

10,331. Would not that still exclude all the poor wage-earners from facilities of applying to the courts?—I do not think so; 5*l.* a week income is rather the exception than the rule for the bulk of the working people. I mean you get a foreman perhaps lucky enough to get 5*l.* a week or steelworkers who do contract work getting these very large wages, but the largest number are from 1*l.* to 35*s.* a week. You get all that class in.

10,332. But it would exclude the great bulk of the miners?—Oh, no; it is 5*l.* a week for the wage-earner—the head of the establishment. It would, of course, include all the miners. The miners' wages in brightest days are only about 40*s.* a week.

10,333. (*Lord Guthrie.*) Do I understand that you suggest that any one, however poor, should be able to obtain divorce without paying anything at all—even the cost of witnesses?—No, my Lord, I did not say so. I rather agree with Sir William Cobbett that if it is practicable the very poorest should have all the assistance that is necessary, but the class of people who have 3*l.* or 5*l.* a week should be called upon, at any rate, to pay what I think ought not to exceed 10*l.*, 15*l.* or at the very most 20*l.*, for relief.

10,334. Even in the cases of the very poorest is it not reasonable that, say, to the extent of 5*l.* to 10*l.* applicable to witnesses, they shall pay themselves?—I have considered this and I think the better way to deal with that would be that after necessary preliminary inquiries by the official as to the righteousness of the case and the pecuniary position of the party, that he ought to say in the poorest cases, "Well, you must find 5*l.*"; or: "This is a case where you cannot find anything," and there are a large number of cases where the man could not find anything. A man with 1*l.* or 22*s.* a week and a family cannot possibly save any money.

10,335. Supposing, apart from witnesses, court fees were remitted and the professional assistance was provided gratis, even though the witnesses had to be provided for, would not that meet the great bulk even of the poor cases?—I think it would.

10,336. That is the system we have in Scotland. I quite agree there are the very, very poorest cases then still remaining?—I did not know, my Lord, it was the practice there, but it would meet the position here.

10,337. Then, take the other class you referred to up to 5*l.* as opposed to 60*l.* costs in an undefended case; what expense do you think it would be reasonable to expect them to pay?—In a 60*l.* case?

10,338. No, as opposed to that?—I think 15*l.* Some people connected with me think 20*l.*; but I think 15*l.*

10,339. I do not quite follow how you made up the 60*l.* There were the court costs, 6*l.*; the witnesses, 20*l.*; the profit costs for the country solicitor, 12*l.*; and counsel, 6*l.* That is 44*l.*?—And then the London agent's costs.

10,340. That would be 16*l.*?—That would be 16*l.*

10,341. That is how it comes?—That is how it comes. It is quite approximate. I did get a lot of bills together, but they all worked out at that.

10,342. I did not quite follow how you put the witnesses in the lowest possible case at 20*l.* Supposing a London case, where it is of the very clearest kind; perhaps there is a certificate of an illegitimate birth registered by the wife herself, and she is still living with the co-respondent; the witnesses there might be only a few shillings?—You would have to have the witnesses as to identity, which must be beyond doubt in the Divorce Court.

10,343. It strikes me as a large sum to state as a minimum in a typical case of the clearest kind?—May I illustrate what I think is a typical case. You have a petitioner; from Leeds to London the return fare is about 32*s.*; it involves at least one night in London. We will say the case is adultery with a man living in the same house——

10,344. Well, take three other witnesses?—Well, if you take three other witnesses you have three lots of expenses which are generally allowed at about 3*l.*; that is for two days and a night—travelling expenses and hotel expenses. Then, if it is a land agent or house agent, he is always a couple of guineas a day or a guinea a day, and the result is you get three witnesses, their personal expenses—allow it only from 9*l.* to 12*l.*; and my experience is that the other 8*l.* or 10*l.* is made up by allowances to witnesses for their lost time.

10,345. Well, take the case of Leeds in the poorest class?—Yes, 20*l.* for witnesses would be reduced. It would, in the first place, mean there and back in one day——

10,346. But say the case is tried in Leeds?—Yes, well that would be there and back in one day, and if the county court areas were adopted or the circuit area (it would be more in that case); but if the county court area were adopted, the ordinary county court scale would apply.

10,347. It would be a 5*l.* note?—Yes, a man would slip out of his office and give evidence and go back again.

10,348. (*Sir Lewis Dibdin.*) Your view as to the very lowest class, I gather, is that any extension of the divorce law would make very little difference?—I think so.

10,349. They think neither of marriage nor divorce?—That is my opinion.

10,350. Eliminating those, you have a class of people who are very poor but respectable?—Yes.

10,351. And then the better class, artisans and clerks up to whatever is your maximum of 3*l.* or 5*l.* a week?—Yes.

10,352. But in that class, I think you have told Lord Guthrie, there will always be some who will not be able to pay anything towards divorce?—Yes.

10,353. And yet the grievance with them is as great as with rich people?—Yes.

10,354. With regard to those do you propose any improvement in the *in formâ pauperis* machinery?—That is what it comes to.

10,355. Without going into detail you propose a reform in that?—Yes, a real *in formâ pauperis* procedure.

10,356. But with regard to the others, when that poorest class is provided for, you think it ought to be done by making the costs of divorce much cheaper?—Yes.

10,357. Down to 15*l.* or 20*l.* for the suit?—Yes.

10,358. As a preliminary to that I think you consider that it would be necessary, supposing the matter were kept in the High Court, that there should be a very considerable reduction in fees?—Yes.

10,359. That, I suppose, is possible?—It is certainly possible.

10,360. Supposing that were done so that the difference of fee expenses between the High Court and the county court disappeared?—Yes.

10,361. Then we come to the trial, and who is to try it. Do you prefer a county court to a High Court judge or not?—I do not prefer him, but I say he is just as good for this purpose.

10,362. If you could get it you would prefer a High Court judge?—No.

10,363. Supposing the county court judge has jurisdiction in all divorce cases where parties happen to have a limited income of under 5*l.* a week, but all the richer people have a court in London, are not you keeping up that inequality between the rich and the poor which you want to get rid of?—No, I do not think so, because you are keeping up a gross inequality by giving a luxury to the rich and barring the poor from it. Therefore, you may be, as it is sometimes called, setting class against class, but you are giving the persons who always feel that grievance and preach it more than anybody else the very relief the absence of which they are complaining of.

10,364. It is an amelioration of the present position?—Yes.

10,365. But not a removal of the injustice of there being one court for the rich and another for the poor?—I think it is going a long way.

10,366. Do you know of any other matter where the court which is to decide the matter has to depend on the poverty or the riches of the litigants—I do not mean the money value of the subject matter of the action?—No; I follow.

10,367. Do you know of any other case?—No, except one is bound to recognise the county courts have developed into what one may call not a pure debt-collecting court, but a poor man's court. You have increased the jurisdiction up to 100*l.*, and any issue can be tried now in the county courts.

10,368. I fully realise all you say of the excellence of the county courts, but we must face the fact that the court in London is on a higher plane than the county courts; it is a more expensive tribunal?—Yes.

10,369. And the judges are better paid, and, with the fullest respect to the county court judges, they are usually more eminent in their profession?—Yes.

10,370. So if your suggestion is carried out, you will be keeping a tribunal paid for by the State for the rich, and a tribunal which, for this purpose, I will call inferior for those who are not so rich?—You will be doing it. You will undoubtedly be doing it, but I think the answer is manifest, that as things are at present it is impossible. I admit you are doing it.

10,371. Well, keeping in view that anomaly which would exist, I want to know whether you have considered the proposal that a judge of the Probate Division should go down and try these cases?—I do not think it would make any difference.

10,372. Why?—In the first place, my experience is that the judges are always in a very great hurry to get back, and, secondly, I think we should get a very much quicker remedy in the county court as against this circuit business, and therefore I think the machinery would have to be new, and would be more costly, and I think to the State it would be more expensive, if the expense to the ligitant was reduced.

10,373. I am not dealing with the assizes. I am suggesting Mr. Justice Bargrave Deane's proposal—not that there should be judges appointed for districts, but that one of the present judges or an additional judge appointed to that division, with all the knowledge and experience of the Divorce Court in London, should go down to different centres and take these cases?—If he could go with the regularity and precision of time, we should like all very well; but it would mean an addition of five or six judges to the Divorce Division, because he would have all the country to deal with.

10,374. Do you then anticipate an enormous increase of divorce cases?—I do.

10,375. Then your view is that would not adequately deal with the great rush of cases that there would be?—I say it would be impossible.

10,376. Do you think that rush would continue, or would it be a working off of arrears?—I think it would go on. There would be a larger number to begin with, but I think it impossible for the two judges of the Divorce Division to do that—to come into the country and try all these cases on circuit.

10,377. Now, you told the Chairman that you knew of a very large number of cases of applications for discharge of a separation order on the ground of the infidelity of the wife?—Yes.

10,378. What does that mean in figures?—Well, I should say the term "large" must be taken in its ordinary sense—about 10 per cent.

10,379. Now, let us take last year. First of all, how many cases did you have in your personal knowledge where there was an application or a proposal for an application for a separation order at all—cases where people consulted you with regard to getting a separation order?—I actually conducted 100 cases in the Leeds courts, and that is a third of the whole as near as anything.

10,380. And I suppose a good many more where they consulted you, but at your advice or otherwise no application was made?—Yes, or where the parties have gone back again.

10,381. Were orders made in those 100 cases?—I should say in perhaps 75 per cent.

10,382. Well, that is 75 cases?—I should like to say, in many cases where orders really ought not to have been made, but one rather feels it is manifest the parties cannot get on together, one often says: "You "had better have for your own protection this order, "and it may bring your wife to her senses."

10,383. Well, take the 75 cases where there were orders. In what number of those were there applications by the husband to rescind them?—I think I had about six, and I know another gentleman who had about five. That is how I get at my 10 per cent.—10 of the 200; about 20.

10,384. Twenty of the whole 200?—Yes; I say applications, but not necessarily discharge.

10,385. Then you say you have known a large number of cases where the husband has got into arrears with the alimony, and the wife has come for a warrant, and owing to the present state of the law the warrant has to be granted though she is living in adultery?—Yes.

10,386. What sort of numbers are you speaking of?—I should say a good all round 5 per cent. of these cases. I do not mean last year, necessarily.

10,387. Do you mean 5 per cent. of the cases where the husband has got into arrears, or 5 per cent. of cases where the separation order was made?—I say 5 per cent. of the whole. I should say five in every 100 cases in my experience the last few years. I should say 10 or 15 cases where men have been brought up for arrears and the husband has alleged the wife has been living in adultery and said he could prove it.

10,388. You think there are 5 per cent. of the cases where separation orders have been granted and the husband has got into arrear?—Yes.

10,389. Secondly, he is brought up on a warrant?—Yes.

10,390. And, thirdly, the defence is presented that the wife is living in adultery?—Yes, that is what I should say about.

10,391. You have told us that there is a great deal of collusion in the application for separation orders?—Yes.

10,392. They are practically arranged separations done through the separation order, by one side or the other standing silent while the evidence on the other side is being given?—Yes; what I mean by that is not probably actually prearranged between the parties, but I call it just as much collusion when the wife knows she has no case against her husband, and the husband knows he has a good answer, but says, "Oh, let the "case go." I say that is as much collusion as the

parties meeting before they come into court and arranging it.

10,393. I know you do not want to deal with the question of extension, but supposing the jurisdiction were enlarged and divorce were granted for desertion, do you think or not there would be collusion very prevalent in the same direction as the separation orders?—I think it would in the general class.

10,394. (*Judge Tindal Atkinson.*) It has been suggested to you that a judge of the High Court attached to the Divorce Court should travel through the country, and take these cases. Would it be of any use whatever unless he sat in at least four towns in every county court district?—I do not think it would. It certainly would not in Yorkshire.

10,395. And that would mean that he would have to sit in 140 towns?—Well, I accept your arithmetic, Judge, of course.

10,396. If he commenced his work, when would he get home?—I do not know.

10,397. Now with regard to the county court, is it your opinion that it would be better for all the county courts to have jurisdiction for the judge to take divorce cases in all the county courts, and not in special courts unless the judge himself thought fit?—I should say in all the courts, Judge.

10,398. Is it very important to the poorer classes that they should have ready access to the registrar and to the staff of the county court?—Undoubtedly.

10,399. Is it your opinion that the registrars of the different districts throughout the whole country are very competent men?—Yes.

10,400. Then a witness stated that he objected to the jurisdiction being given to the county court on the ground that the poorer classes resented being driven into the county court. Is that your opinion?—I do not believe it for a moment.

10,401. Then as to the witnesses; where the parties are suing *in formâ pauperis* in the country and the court fees are remitted and the counsel and solicitors are assigned, if those suitors are compelled to come to London, say, from Yorkshire, would that be any use to them?—I do not think it would. It is the coming to London that I think is the preliminary obstacle in the expense.

10,402. One question of publication I should like to ask you. Is not there some use in publication of reports in order to prevent rumours getting abroad about parties which are not cleared up by the report itself. I will explain what I mean. In a local place there is a great deal of gossip about a divorce case before it comes on for trial, and there are many persons' names implicated in it. If you only have the names of the parties given at the end of the proceedings and none of the proceedings at all, the characters of some persons may have been seriously affected without being properly cleared?—That happens when there are no divorce suits at all. I have heard of proposed divorce suits that have never been floated being discussed considerably, and I do not think that would affect that.

10,403. But it would clear their character if there was a trial?—It would not, I think, in my opinion. People say: "Oh, well, he has got off, but he is as much "to blame as anybody else."

10,404. Do you find the suitors like to sue *in formâ pauperis*?—I suppose 99 out of 100 do not know what it means except that the word "*pauperis*"—they know what a *pauper* is; but "*in formâ*" I do not think they know the meaning of; and I do not think they care as long as they get it cheap.

10,405. (*Mr. Brierley.*) You say you had 100 cases?—Well, I think it was 92.

10,406. Under the Act of 1895 last year?—Yes.

10,407. Could you tell me in about how many cases the order in those cases was taken out?—My experience is that probably the greater proportion, for this reason. I am glad you asked me this, because I think I can give you some valuable information. The people who can afford to go to a solicitor will take the order up—they are serious about it; but we have now in Leeds at the present time, I am told by the assistant magistrates' clerk, 4,000 orders lying in his office which have never been taken up.

10,408. We had evidence from the clerk to the magistrates at Newcastle that 75 per cent. of these orders were not taken up?—I should say so, but those would be the cases where solicitors are not employed, but there again you have an anomaly; the wife cannot enforce this order for a month, and before she can enforce it she has to go and pay four, five, or eight shillings for it, and she waits till the month is up and is absolutely destitute, and she has to take out an order then which costs according to the number of witnesses about half a guinea.

10,409. Now you suggest that the jurisdiction of the magistrates should be raised to 4*l.* or 5*l.* a week. Can you give any idea as to how many orders are made for 2*l.* in Leeds?—I cannot say that, but I should say rather a few.

10,410. Do you mean very few?—I think very few, and the reason is obvious, that the magistrates are rather reluctant to put the maximum on.

10,411. But would not that go to show that there is no very great necessity for increasing the amount?—Well, I hardly agree there, because I often ask for the full amount and very rarely get it, though I think we ought to have it.

10,412. That may be because you have not proved means in the husband?—I find the vagaries of the magistrates account for that.

10,413. You mean they have an objection to granting the maximum?—Yes.

10,414. You think if the maximum were larger it would get a larger order sometimes?—Yes.

10,415. Now you made a suggestion with regard to there being a statutory provision that the wife should not have a second order within 12 months of the first one?—Yes.

10,416. And you have instances of a wife having a second, third, or even a fourth order. Were those cases of desertion?—Mostly, some persistent cruelty.

10,417. In cases of desertion I suppose a maintenance order might have been made?—Well, latterly so, but not a year back.

10,418. Do you think the making of the maintenance order had any effect in bringing back the husband to cohabitation?—I do not think so, because I do not think they understand the distinction.

10,419. At any rate, do you think the making of the order for him to pay so much a week, whether accompanied by a separation order or not, had the effect of bringing him back to his wife?—Oh, I think it often has.

10,420. You suggest that these orders are collusive, but may it not be in fact that unless the maintenance order was made the husband would stay away from his wife and children?—I think that may be so, but it is nevertheless collusive, because it means that they are sick of each other and they agree to an order.

10,421. Then if your suggestion is carried out that the wife should not get an order within 12 months, what would happen if he left her again after returning after the first order?—I think a woman who has a real cause would not go for relief for separation in her own interests, to say nothing of her children, unless she is driven to it and had finally made up her mind that he is not a fit person to live with.

10,422. But I am taking the case of desertion. Take the case where the husband has left her for a month, and he does not intend to come back; she then gets a maintenance order upon which he returns to cohabitation. Then supposing he leaves her again after a month's cohabitation, what do you suggest she should do?—I should suggest, except in very exceptional circumstances, she should not have him back to begin with.

10,423. But I understand you suggest she should not be able to get another order for 12 months?—I do.

10,424. Then her only alternative would be to apply to the guardians if he left her again?—I quite agree.

10,425. In the Leeds Union do they give outdoor relief to these women?—Very rarely.

10,426. Then she would have to break up her home completely. She would have to go to the workhouse, and that would mean breaking up her home?—Yes.

10,427. Why should she not be allowed to apply for another order without being driven to the workhouse?—Well, I think in the bulk of cases where the women do this, the women have no grievance. I agree you have exceptional cases where there is the hardship.

10,428. I rather suggest it is not very exceptional, and would not be exceptional if the husband knew no order could be made against him for 12 months?—I agree there is a great deal of force in that way of looking at it, but I think it has been abused.

10,429. I only suggest it might be better to leave it to the discretion of the magistrate than making a statutory prohibition?—If you could have a standard of administration by the magistrates it would be an excellent thing, but you cannot get uniformity.

10,430. I rather suggest the remedy you propose is worse than the disease?—Well, I do not agree; but it is a matter of opinion.

(*Sir George White.*) Might I put one question?

(*Chairman.*) Yes.

10,431. (*Sir George White.*) Sir Lewis suggested that poorer people would feel they had a grievance if they were not allowed to have their cases tried in the High Court. Does not such a thing happen now that people of means take a case to the High Court that could be tried in the local court?—Yes, and I do not think they think anything about it.

10,432. I suggest the grievance is the other way, that people with small means think they should be tried in the county court rather than the High Court?—I agree. I do not think the ordinary litigant cares much if he gets his 75*l.* damages in the county court or the High Court. He certainly gets more out of it in the county court.

10,433. (*Chairman.*) Does your proposal mean that the poor should be excluded from the High Court?—No, but I mean if they want the facilities at a cheaper rate they should have it.

10,434. The High Court would be open to both?—Yes.

(*Sir Lewis Dibdin.*) I thought the suggestion was that it was not open to them.

(*Chairman.*) Oh, no.

(*Sir Lewis Dibdin.*) That is the whole point—that they cannot get there.

(*Chairman.*) That is true.

(*Sir Lewis Dibdin.*) Then it is not open.

(*Chairman.*) It is open to them in the sense that if they can find the money they could go there.

(*The Witness.*) Oh, yes.

10,435. And in addition to giving them an opportunity in the local court to bring the case there?—Yes.

10,436. That is not creating a difference of courts that they cannot resort to, but giving another that they can go to?—Yes.

10,437. Just one question with regard to desertion. You thought there might be collusion in those cases if that were made a ground for divorce. Have you considered two points: first that it would have to be wilful desertion?—Yes.

10,438. Secondly, that it would hardly be amongst the poor class that they would agree for a desertion lasting for so many years?—I am not strong at all that divorce should be granted merely for desertion, but I agree that if divorce could be granted as the outcome of desertion collusion would go to a great extent.

10,339. Would go?—Yes.

10,440. Well, would it be likely to prevail amongst the poorer classes unless they could afford to arrange for desertion over a long period?—Well, there would be that difficulty of course, but, personally speaking, I should not grant divorce on the ground of desertion.

(*Chairman.*) Thank you very much for your evidence, Mr. Willey. It has been most valuable to the Commissioners.

Mr. JAMES EDWARD WING called and examined.

10,441. You are a solicitor of Sheffield?—Yes.

10,442. And you come here on behalf of the Sheffield and District Law Society?—I do.

10,443. To give evidence for that society on the points before the Commission?—Yes.

10,444. You were admitted a solicitor in January 1894?—Yes.

10,445. And have since practised on your own account in Sheffield?—Yes.

10,446. You have had considerable experience in divorce cases?—Yes.

10447. And also before the justices in separation cases?—I have.

10448. With regard to the question of conferring local jurisdiction in divorce cases, what view are you here to present?—I am strongly in favour of its being bestowed on county courts.

10,449. Have you during your professional career had clients who have consulted you about divorce, and found difficulties in the way?—I have.

10,450. What is the difficulty?—The expense. Immediately you tell them the expense, they at once say, "Impossible."

10,451. From what class of people have those come?—From the working classes, my Lord, and people I should say with incomes under 200*l.* or 250*l.* a year, principally the working class of about 35 to 40 shillings a week.

10,452. And you found they could not proceed?—That is so.

10,453. Do you find the law of proceeding *in formâ pauperis* satisfactory?—I do not, at all.

10,454. Why?—The difficulty is in getting any solicitor to take it up when you have an order. I had one a little time ago, and got the order, and I could not get it taken up.

10,455. What is your experience with regard to the costs in obtaining divorce, and its effect on people?—If anybody comes to me, and asks me the cost of getting a divorce, I say, if it is undefended, between 50*l.* to 60*l.*; and the majority say: "Well, it is absolutely hopeless"; and my experience is that in the working of the divorce laws now no woman practically of the working class can get a divorce at all. She has not any means.

10,456. Have you found any consequences result from that?—Yes, I am sure a number of them are living in adultery.

10,457. You are in favour of the county courts, I understand?—Yes.

10,458. As being a proper tribunal to have jurisdiction conferred on them?—Yes.

10,459. What do you say as to the assizes?—I do not think they would be any good at all. Take the instance of Sheffield. The assizes are at Leeds. We have to travel from Sheffield to Leeds to have our cases heard there. We might as well come to London, except it would be a little more expensive. We should have to employ solicitors, which would be the same expense there practically, and the witnesses would have to be away all day; so that, as far as Sheffield is concerned, the difference would only be between the travelling from Sheffield to London, and from Sheffield to Leeds.

10,460. You would suggest a limit of means for people allowed to use the county courts?—Yes. I suggest that a petitioner should not have more assets than 500*l.* and an income of over 250*l.* a year.

10,461. Do you raise any question about trial by jury in the county court?—I approve of giving the option. I think a jury is very useful. The reason I say the county court is that you have machinery there. There are certain interlocutory applications which a registrar could hear and hear cheaply—practically on your doorstep; and I think I should limit it to the extended jurisdiction. I think the registrars, taking them as a class (I do not want to say anything disparaging), ought not to hear interlocutory applications on divorce. If you extend it to other than the extended jurisdiction, I would like the judge to deal with it.

10,462. The next points are details with regard to improving the procedure and fixing special days. I think we can pass that?—If you please, my Lord.

10463. Do you suggest some alteration in the law with regard to separation orders?—I do, my Lord.

The alteration that I suggest is that they should be granted on proof of adultery only. I would add that I would give that power to the justices.

10,464. Would that be necessary if the county court has jurisdiction, and that course were provided for?—There may be a case where a woman does not want a divorce, but prefers to have a separation.

10,465. But that could be dealt with in the county court?—Yes.

10,466. I do not think we have had it suggested that the magistrates' jurisdiction should be extended in this direction, though general divorce jurisdiction was suggested by some one. Then you say, "If the wife "or husband commit adultery it ought to be open to "the innocent party to obtain a separation with main- "tenance, should a divorce not be desired." That is that point?—That is so, my Lord.

10,467. We know there is no remedy for that at present?—No.

10,468. And you would also grant a separation order on the ground of the defending party being an habitual criminal?—I would, my Lord. I think he is equally bad, if not worse, than an habitual drunkard—far worse to the wife.

10,469. Then you would grant it where she has not left her home. You would not make her leaving to be a condition of getting an order?—No.

10,470. Then you suggest the husband should have such a separation order if the wife has been convicted of felony and sentenced to imprisonment for six months or more?—Yes.

10,471. Is that the view of your association?—Yes, and I submitted this proof to them.

10,472. Then that the magistrates should have jurisdiction on conviction for sodomy, rape or bestiality?—Yes.

10,473. Then you propose to have a rota of justices selected?—Yes, if we are going to leave separation orders for justices, which I approve of, to deal with, then I should suggest some justices should nominate others.

10,474. Is that to get more uniformity?—Yes.

10,475. You say some justices grant separation orders on insufficient evidence?—Yes, some lean very easily to the wife.

10,476. And others the reverse?—Yes.

10,477. You think this is more so with regard to persistent cruelty cases?—Yes.

10,478. Would not you think it best, then, that that jurisdiction should be exercised by a legal brain?—Yes, I do.

10,479. Like a stipendiary magistrate?—Or county court judge.

10,480. Do you mean you would be in favour of this magisterial jurisdiction being transferred to the county court?—No, I do not think I should take away the separation orders from them. I should not go as far as that.

10,481. But even in that case you would prefer to see them dealt with by a legally trained person rather than by lay justices?—Yes. We have an excellent magistrate's clerk in Sheffield. There are other places where they are not so blessed.

Adjourned for a short time.

10,482. (*Chairman.*) You were pointing out the difference between the views of magistrates when we separated, and I think you stated in your view that that difference obtains more on applications as to persistent cruelty; some take very slight acts committed by the husband as acts of cruelty?—Yes.

10,483. Is that your experience?—Yes.

10,484. You think persistent cruelty ought to be defined, if possible?—I do, certainly.

10,485. Then with regard to publication. Will you tell us what the views you represent are?—My views are that they should be published, subject of course to a certain censorship, a discretionary power vested in the judge as to any details being prohibited. I am of opinion that if I were at all mixed up in a divorce case I would rather have the whole details published broadcast in the papers than I would have people who had been in court going back to my place and reporting in their own words in such a way that I might be incriminated when I was not incriminated in court.

10,486. Would that be met by publishing the charge and the result of it?—No, I do not think it would quite. I do not agree with the indecent details being published, but if I was mixed up in a divorce case I would rather have a verbatim report of it than I would have it cut down by a reporter.

10,487. But supposing the publication said a certain charge was made, and gave the fact of a certain decision?—I would rather have the details brought out.

10,488. Do you think that would be a good thing for the public?—I do, and I have found it beneficial in this way. One has often got witnesses in a case which one would never have got otherwise. I remember a case I was interested in where I got a witness because of the publication which I would not have got without.

10,489. Do you find it deters people coming to give evidence?—I cannot say I have found that. Naturally, people do not like being mixed up in a case of any kind.

10,490. You, however, prefer a discretionary power in the judge?—I do.

10,491. Then as to the amendment of the law, you have specified amendments?—I suggest the wife should be entitled to have a decree on proof of adultery of the husband without having to couple it with desertion or cruelty.

10,492. That is putting them on the same footing?—Yes, and if you must have desertion I should say it should be reduced to three months.

10,493. Instead of waiting two years?—Yes.

10,494. Have you formed any opinion at all whether desertion should be alone a ground?—For divorce I would suggest seven years in the case of desertion alone.

10,495. And then you also are in favour of divorce if the respondent is a certified lunatic?—Yes.

10,496. Having been confined for a period of, say, five years with evidence of improbability of recovery?—Yes, a certified lunatic.

10,497. And also if there has been a conviction of a respondent of a crime and sentence of five years to penal servitude?—Yes.

10,498. Or of being an habitual criminal?—That is so.

10,499. And then the seven years you have already dealt with?—Yes.

10,500. I see you also suggest an amendment of the practice of allowing the wife costs before trial?—Yes.

10,501. You suggest the husband should deposit money in court?—Yes, or give security.

10,502. That can be done now?—Yes, but further that they should not be able to draw it out unless the judge certified there is a *bonâ fide* defence.

10,503. That does prevail now. That can be done now?—Yes.

10,504. I gather you are supported in general by your special sub-committee of the Sheffield Law Society with the exception of where you suggest that the wife should be entitled to have a decree on proof of adultery of her husband without cruelty or desertion or any other offence, and on that your sub-committee did not come to any decision?—No.

10,505. Was there a division?—No, it was not seriously discussed, but when I sent my proof up to the president and said I should give that evidence he suggested he did not know whether that had been directly decided, and therefore I had better not put that in.

10,506. Therefore, on that you only give your own view?—Yes.

10,507. (*Mr. Spender.*) You say that a judge should have discretion in the reporting of divorce cases. Have you thought what that means?—Well, of course a great number of papers report a case very accurately, and do not publish anything they ought not to, but there are others if anything spicey comes out they put it in the forefront. I should suggest, if it could be done, to have a kind of censor.

10,508. But the difficulty of reporting is to check the thing which is actually in progress. We have had

various suggestions made, but, as you know, the report goes off to an evening paper. It is taken down as the case goes along and is sent off a few slips at a time?—Well, nothing need be published unless it goes through the censor; it need not be published the same day as it is being heard.

10,509. Then you would stop the publication every day?—If the judge thought necessary. There are cases where something could come out in the papers, but other cases where there is anything approaching indecency ——

10,510. Then your view is that there should be at the end of the day's proceedings a certain report passed by a censor or official of the court?—Yes.

10,511. The effect of that would be to prevent evening papers from reporting it?—Yes.

10,512. You have thought of that?—Yes, I have.

10,513. Then you say you would confer divorce jurisdiction only on those county courts which have extended jurisdiction?—Yes.

10,514. I do not know whether you could tell us in how many courts of the 55 county court circuits there is extended jurisdiction?—I could not tell you, but all of them have extended jurisdiction in some of their courts. For instance, Sheffield takes Rotherham and Pontefract.

(*Judge Tindal Atkinson.*) Under the Act of 1903 the Lord Chancellor can fix certain courts where the extended jurisdiction is to be taken, and the county court judges send up a list of the different towns where they think the extended jurisdiction cases should be taken, and then certain towns have been fixed in which the extended jurisdiction cases should be taken. In some places there are very few, and in others practically all of them.

10,515. (*Mr. Spender.*) I wanted the number of county courts?—I think they would fairly cover the country. I think there is more solemnity about those courts. In some places the judges sit in a schoolroom and all sorts of places, and I think if they were held in a proper court room there would be more solemnity about it, and, further, the registrars of those courts. as a rule, abstain from private practice, and could, therefore, hear interlocutory applications.

10,516. It has been suggested in evidence to-day, I think, that the working classes might resent there being county court jurisdiction. That they might not think it a sufficiently dignified court for their cases?—I do not agree with that. I think the people appreciate the county court fully, and my idea is that the county courts are an admirable institution, and the judges admirable judges—as far as I know—and are quite capable of dealing with cases like these.

10,517. You would give a jury?—I would allow the option.

10,518. You would allow damages?—Yes, I would limit damages to 100*l.*

10,519. (*Sir George White.*) You state in your proof many clients have consulted you as to obtaining a divorce, and have been unable to proceed when you have given them an idea as to the cost?—Yes.

10,520. What class of people would you describe these as being?—I think people earning up to 200*l.* or 250*l.* a year. Of course, people who earn 250*l.* may have three or four or five people to keep, and have to keep up a certain position, and a clerk in that position would probably be poorer than a working man who was earning 35*s.* a week.

10,521. And what would be the lowest figure, do you think?—The lowest would be about a guinea a week—labourers.

10,522. And you say, in consequence of their not being able to proceed, immorality results in a great many cases?—I do.

10,523. Then in dealing with separation cases and extending the grounds of separation, you say you think there should be a separate court or a separate class of magistrates separated for that purpose?—Yes, a separate class of magistrates.

10,524. We have had that expressed before, but I have not been able to determine how you are going to secure that these five or seven selected shall be the magistrates who will deal with the cases on the lines you suggest; that is to say, you consider that these separation cases are sometimes, on some rotas of magistrates, given far too easily?—Yes.

10,525. But how are you going to preclude those magistrates from being chosen on this separate rota?—They would not be prohibited from being chosen, but my idea is to get more uniformity and adapt the same system as they do in the Licensing Act, where all the justices meet, and they select seven or nine to deal with these cases, and they could meet once a fortnight or once a month; and those justices—two or three to form a quorum—should hear husband and wife cases, and so gradually train them up to deal with those particular cases.

10,526. It does not follow they would be any better than the whole community would be, or any particular rota, but you would get uniformity?—No, I do not suggest certain magistrates could not deal with them.

10,527. (*Lord Guthrie.*) Supposing you had Sheffield cases tried at Leeds, would that involve the employment by you of a Leeds solicitor, or could the Sheffield solicitor conduct it?—That would depend on the circumstances. If you institute them in the registries, then in Sheffield we do all our interlocutory proceedings in Sheffield, and the pleadings are sent to Leeds just before.

10,528. Supposing the case is tried at Leeds?—It is not necessary to have agents in Leeds for assize cases.

10,529. Then you would get rid of that double representation?—Yes.

10,530. That is, if there was audience for solicitors as well as barristers in Leeds, you would conduct the case yourself?—Yes, certainly; but I should not advocate that myself, for solicitors to have audience at assizes.

10,531. These two matters would affect the costs?—Undoubtedly; counsel's fees and the witnesses' expenses and the necessity for the agents are the stumbling blocks.

10,532. Instead of 60*l.*, say, for an undefended case, what do you say would be the amount that such people as you are speaking of should find?—I do not think I should go a penny above 20*l.*

10,533. You say, in your proof, in some cases you strongly favour a jury for the matrimonial cases; but what kind of case do you say a jury would be best for?—Well, supposing you have a case of adultery pure and simple; well, the judge, of course, would advise the jury, and they would have to find certain facts and which witnesses they believed. Personally, we hardly ever have a jury in Sheffield at all; I do not think during the present judgeship there has been a jury; probably one.

10,534. You do not think a jury would be a better tribunal than a judge?—No, I would give the option.

10,535. If there were a question of collusion, would a judge be the better tribunal?—I think he would.

10,536. (*Sir Lewis Dibdin.*) I did not gather how many solicitors there were in your society; I daresay you have stated?—No, I have not; I should think about two hundred; practically all the solicitors in Sheffield.

10,537. What is the size of your committee?—It has just been enlarged; I think it is about 26.

10,538. Did the whole of them consider this?—No, they selected a sub-committee.

10,539. How many was that?—Five or six, I think.

10,540. Did they report to the committee?—No, they have not reported at all. They selected me to come up and give evidence, and I sent my proof up to the secretary and the president, and they approved. Whether they brought it before the committee I do not know. I was on the committee, but I have just retired this year.

10,541. As far as you know the committee here meant the sub-committee?—I think it is approved by the full committee.

10,542. But of that you have no actual knowledge?—No.

10,543. I gathered that you propose a limit; your view is that the poor cannot go to the High Court?—Impossible.

10,544. And therefore you recommend the county court?—I do.

10,545. Therefore, in your view, it would be quite illusory to say that the High Court is open to the poor?—It is open, but it is practically impossible for them to go there.

10,546. Why do you propose the limiting of the county court. You propose any petitioner who has more than 500*l.* or an income of over 250*l.* should be compelled to resort to the High Court?—Yes.

10,547. Why do you say that?—Because I think that is a reasonable sum whereby a man ought to have money to go to the High Court.

10,548. But if the county court is good enough for a man with less than 250*l.* a year, why is it not good enough for a man who gets more than 250*l.* a year?—I should not have the slightest objection to having it unlimited and letting the county court judges try any case; but I assume the idea is to relieve the working classes from the hardship there is upon them, and my idea is this: that if a man has, say, 500*l.* a year, it does not deter him from getting a divorce because he has to come to London, whereas a man who has a stronger case cannot possibly come and get a divorce.

10,549. I follow that; but I do not see why you think a man with more than 250*l.* should be compelled to go to the High Court. I suppose in your view a marriage is of as much importance in the one class as in the other?—Yes.

10,550. Then why should the High Court keep open at all for this purpose?—I do not know; there may be intricate points of law.

10,551. But you see no object in it?—No, I think the county courts can deal with them.

10,552. The High Courts in London cost the State more than the county courts?—Yes; and we contribute to it in Sheffield, and do not get the benefit of it.

10,553. In your distinction with regard to cases of desertion I notice you limit it to where the party has deserted for seven years without having been heard of?—Yes.

10,554. Is it in your mind to assimilate the law of divorce to the presumption of death in bigamy cases?—Something like that. Some time ago a lady came to see me about her husband; she had not heard of him for 10 years, and he never contributed a penny; and she worked to keep her child, and she said she had an opportunity of getting married, and she said she would not get married unless she could get a divorce.

10,555. Would you say it was fair to presume the husband was dead?—For the purpose of divorce, certainly; but not to presume his death for other purposes.

10,556. No; divorce?—Yes.

10,557. And you put it on that ground?—Yes.

10,558. Apart from that, are you in favour of allowing divorce for desertion where the man has been away three or four years?—Seven years.

10,559. But, apart from that, are you in favour of divorce for desertion if it is not so prolonged?—No, unless coupled with something else.

10,560. And that something else being adultery?—Yes.

10,561. With regard to reports; would it in your view meet the justice of the case (I note your view on the necessity of publication)—but do you think it would be a good plan if no report were allowed until after the case was finished?—Well, I do not know. Then you would not be able to get the evidence, which I say is one of the benefits.

10,562. But that surely is a very rare thing?—Yes, perhaps it is rare.

10,563. Have you not often met with cases where a great deal of harm has been done to people (witnesses perhaps) by reports of a case while it is going on, whereas, if the case were finished, it would be obvious that that particular person was not to blame in any way?—Well, suppose in a divorce case my name was mentioned in connection with it, and I wanted to come during the hearing to ask the President of the Divorce Court to let me come and deny it in the court; I could not do it then because it would be over.

10,564. Do you think cases of that kind are frequent?—Well, I think frequent enough.

10,565. Then you would not be in favour of deferring the report until the case was over?—No, I do not think I should go so far as that.

10,566. The remedy you suggest is that the report should be subject to censorship?—Something of the kind.

10,567. Now, you are in favour of a very large extension to county courts. How would that be practically managed with a great number of county courts all over the country?—The registrar or his chief clerk could do it very well.

10,568. This is a matter you would leave to a registrar?—Yes, quite.

10,569. To be added to his day's work, because it must be made immediately?—Yes.

10,570. And you think that would be a practicable plan—to be added to his day's work after the divorce case is heard?—Either he or his chief clerk, if the reporter lets him have his report at once, or in a certain time.

10,571. Suppose you had a *cause celèbré* and there were many reports, would you make him go through them all?—I do not know; he could have one official report and let that be settled.

10,572. Would you allow no report, but an official one?—Unless it passed through the censor.

10,573. But suppose the reporter was anxious that he should look at his report and then it was past time, and the registrar said, "No, I cannot do it"?—Well, there is no reason why it should be rushed into the paper at once.

10,574. Then, are you not coming to the question of its being deferred?—No, not if it lasted over several days.

10,575. Then, with regard to having a select committee, as Sir George White put to you. It works fairly well in licensing, does it not?—Excellently.

10,576. And I suppose what the public really trust to is the common sense of the bench in putting those justices on the committee who are best for the purpose?—Yes, we have a very good magistrates' clerk, and when it comes on he practically decides the case. It is his judgment, not the judgment of the bench.

10,577. Would you say on fact as well as law?—No, very often on fact as well as law; but it ought not to be.

10,578. You would trust to the common sense of the bench to select the men that were suitable?—Yes, and I am sure they would do it.

10,579. Have you any view with regard to whether it would be a good thing to have a court like the recently appointed children's court for these separation cases, from which the public should be excluded?—No, I do not think there is any necessity for excluding the public. May I say, in excluding the public and the press you begin to arouse the curiosity of the people, and they become more curious.

10,580. Do you think that is so with the new children's courts?—They are not excluded.

10,581. Well, they are sometimes?—Well, I do not agree with their being excluded. Young children are kept out.

10,582. Well, apart from that, would you think it a good thing to have a separate court like the children's court for dealing with this class of case?—Oh, yes, I think that would be a good thing.

10,583. It works very well with the children?—Yes, as far as I know.

10,584. And the fact that the court is held in a small room, with fewer people there, makes the proceedings of a more human character, shall I say?—Well, in Sheffield it is held in a small court.

10,585. Do you think that would be a good thing?—Yes, but I should not exclude the public.

10,586. (*Judge Tindal Atkinson.*) You have been asked about the county courts absorbing practically the whole divorce business of the country and putting an end to the court in London. The whole principle on which county courts are founded is for limited

jurisdiction and for the benefit of the poorer classes?—Yes.

10,587. A man may owe his butcher 100*l.*, but if he orders another leg of mutton the county court would have no jurisdiction?—Unless he abandoned the leg of mutton.

10,588. But the difference in the two cases is the same?—Yes.

10,589. Then with regard to the registrar. You think the interlocutory proceedings should be dealt with by registrars who do not practise?—I do.

10,590. That is rather a small number, because there are some registrars who have 1,400*l.* a year?—Yes.

10,591. They are excluded from practice?—Yes.

10,592. But many who have a considerable salary are not excluded. What is your objection to their dealing with interlocutory matters in divorce as they do in other matters?—I do not know, except that one kicks against the idea of one practising solicitor dealing with another practising solicitor's work.

10,593. Then you object in any case?—Yes, and I think that is a matter that is deprecated now.

10,594. Does it not occur to you it would be an advantage to suitors to let them go to every county court town. It would be saving a great deal of expense, instead of driving them to these special towns, which have not the extended jurisdiction cases?—Yes; I do not see any objection to the cases actually being tried there, but I mean, as far as the interlocutory proceedings go, I think they can be carried on by the registrar if there is one on that circuit who does not practise.

10,595. You think the trial should take place in every town?—Yes.

10,596. But certain registries should be fixed for interlocutory proceedings?—Yes.

10,597. (*Mr. Brierley.*) You told Sir Lewis Dibdin, I think, that these separation cases ought to be tried in a separate court. Do you think there is any reason for that?—No, I did not say I thought so. I said I should have no objection.

10,598. The stipendiary magistrate in Birmingham said that when he takes these cases the press generally walk out?—They do as a rule.

10,599. Is that your view with regard to the general public?—No, not the general public. There are certain people who frequent the court and never leave it.

10,600. They think it is a well warmed and aired place?—Yes.

10,601. But do you think there is really any necessity or benefit in these cases being tried in a separate court from the ordinary cases?—I do not see the slightest necessity for it.

(*Chairman.*) Thank you very much, on behalf of the Commissioners, for your evidence.

Mr. Godfrey Allan Solly called and examined.

10,602. (*Chairman.*) You are vice-president of the Incorporated Law Society of Liverpool?—Yes.

10,603. You were admitted a solicitor in 1882?—Yes.

10,604. And you attend here at the request of the Committee of the Society you have mentioned?—That is so.

10,605. Your practice is in Birkenhead?—Yes.

10,606. And you have been for 21 years clerk to the justices for the Wirral Division of Cheshire?—Twenty-two years.

10,607. That division has 130,000 population?—Estimated; it is increasing very rapidly.

10,608. Then the Liverpool Law Society includes the Wirral Division of Cheshire?—Yes; and some of the surrounding towns.

10,609. Then I take you first to the question of conferring jurisdiction in divorce on local courts. Have you had any expression of an unanimous opinion of the Liverpool Law Society on the question of the present cost of divorce proceedings?—Yes. I should say the society consists of over 400, and the committee is of 30 members, and this matter was first considered by the committee, and then referred to a sub-committee of about 12; and the whole committee were of opinion that the present cost was prohibitive in many cases, and for that reason there ought to be some means for giving further facilities to the poor. The matter was considered more in detail and this proof was prepared by the sub-committee.

10,610. Is your proof accepted generally by the committee?—Absolutely by the sub-committee and informally by most of the committee.

10,611. Your own views are formed from private practice and also in the police courts?—Yes; and from a good deal of social and religious and charitable work that I have always taken part in.

10,612. Are you chairman or president of any charity?—I have been chairman, and I have worked on missions and so on.

10,613. Have you been consulted in cases where divorce is wanted?—Yes, both by poor clients and by friends interested in poor persons who asked if relief could be obtained by a divorce.

10,614. You mean by charitable associations?—More by charitable persons.

10,615. And you have found the cost prohibitive?—Absolutely prohibitive in a number of cases I can remember. And I think the number would be far greater were it not generally known now, both amongst the poor and amongst the solicitors who mainly practise in the police court, that the cost is prohibitive; so that they do not come to me; they know themselves.

10,616. They know the state of things?—Yes, and do not come to a solicitor. I have several times spoken to solicitors who have been up in cases in my court, and said, "Why do not you try for a divorce?" and the answer is, "We have no means; it is out of the "question."

10,617. You give one or two cases that illustrate your point. Perhaps you would state what those are?—Yes, in one case that I call "S" the wife was deserted by the husband, who had committed adultery; and in another case in the same district the wife of a man committed adultery; and since then the two injured parties have gone together, and in answer to friends of both said that they would have got divorces, but were too poor.

10,618. You mean they have rejoined each party?—No, the innocent parties of the two couples have gone together, and are now living in adultery.

10,619. Living together in adultery?—Yes, but they are living perfectly respectable lives in a decent home, as far as one can tell. If there had only been a divorce, their children would have been legal, and it would have been more satisfactory. They are evidently not abandoned people, or they would not have a decent home now.

10,620. You mention one or two other cases; I need not go through them in detail?—They are much the same class.

10,621. Then it is in your experience clear apparently that there is a section of the community who would if they could get divorces?—I am quite sure there is a section. I do not think there is any very large demand for it, but what demand there is I think serious and urgent. My own opinion personally is that there would not be a very great number of cases that would apply to the county courts from the very poor, but those that would apply very much deserve relief.

10,622. And take those that are not the very poor, but a little above; what about them?—I do not know enough myself to speak of those over 300*l.* My practice has not lain much in that way; but of the better-class artizan (30*s.* to 50*s.* a week), I think a great many of the wives particularly would rather have a maintenance order under the Act of 1895 than have a divorce. The money that they can get under a maintenance order is much more secure. They can get a committal order under that, so they are in a better position than if they had the right to permanent alimony.

10,623. Then there are cases amongst them in which they might desire a divorce?—I think there are cases in which they might desire a divorce, and serious cases, urgent cases.

10,624 Now, what are the remedies that your committee has suggested?—We do not want as a committee—it is not our duty—to express an opinion to extend the causes of divorce.

10,625. I am not asking about that. I am speaking about the courts for the moment?—Well, we think that the county courts ought certainly to be used, and on that the committee is unanimous, I think.

10,626. Was that on the ground of the general expense of London trials, and the other difficulties in the way of dealing in London with them?—Yes, on grounds such as the previous witnesses have spoken of, and that county courts are local courts.

10,627. Would you think the suggestion that the poorer people would resent going to that court is a well-founded suggestion?—I think not.

10,628. You think it would be a satisfactory tribunal to them?—I feel sure of it from my experience, but I should leave the option of going to the other court always open.

10,629. If there is the money?—If there is the money.

10,630. Then as to the right of audience, you have in Liverpool a strong local bar?—And I think counsel would be instructed generally, except in the very poorest cases.

10,631. You would not make it a necessity?—No, I think the extra fee of probably three and one would be almost a bar to the poorest cases.

10,632. Then outside Liverpool you think cases should only be taken on days fixed, with some notice?—Yes, rather like the quarter sessions, which are held on fixed days.

10,633. And I think your committee is agreed that divorce cases should not be taken mixed up with poor cases in the county court, but taken on special days?—Yes, we think that if this facility is given for the special work it ought to be hedged round so as not to become a common thing talked of by everybody, and part of the day's work, but a special matter.

10,634. Is there a feeling with reference to a judge or jury?—Yes, they all think that partly to save expense it should be by the judge alone, and that on the whole it would be a more satisfactory tribunal.

10,635. Is it your experience that the facts are taken by juries?—We have more jury cases than the last witness spoke of. We have a certain number.

10,636. Then as to the jurisdiction, you think there should be some limit on the income being of a somewhat limited character?—Yes, I do not think the suggestion made in the report of the committee, of which I think your Lordship was chairman—the Lord Chancellor's Committee—that the joint income should be a guide, would work at all well. I had a case where the wife was applying for a maintenance order in the police court, of which I am clerk, and she knew nothing of her husband's means, and she could not depose on oath what the ——

10,637. What the joint income was?—She could not do it.

10,638. Therefore you suggest that the wife might have a limited income and the husband only a small one?—Yes.

10,639. You further suggest that the respondent or co-respondent should have a right of removal?—Yes.

10,640. Assuming the county court judge had jurisdiction, might not that be exercised sometimes so as to stop the case going on?—I think that difficulty would be met by the powers for dealing with cases on appeal.

10,641. I am dealing with the proceedings, not appeal. You suggest the respondent and co-respondent should have a right to appeal for removal. Do you mean they should have a right, or that the judge should exercise his discretion as to whether it should be moved?—I think the judge should exercise his discretion. I think then he could at once put conditions on with regard to its being removed.

10,642. Then you suggest a right of appeal from the decision to a High Court judge in chambers, with some safeguard against abuse?—Yes.

10,643. Is it your view that jurisdiction should be given to all county courts, or only those selected by the Lord Chancellor?—My own view is that it should be to all county courts. There was no strong opinion on the committee, but they were in favour of all county courts. It was not a strong opinion as to that, but the judges are the principal factor, and they are the same individuals.

10,644. In the next paragraph of your proof you suggest it would be advisable that the county court registrar should have the power of determining whether a case should proceed?—I do not think such a plan would work well in all courts. Many of the registrars would only have a case a year, and there would be too much diversity in practice through want of experience.

10,645. Then with regard to damages, your Committee suggest there should be no damages claimed in the county court. What has led to that?—On the ground that we are only asking for these facilities for those who want divorce and not damages. We think there may be a danger of cases being got up by a certain class of practitioner "on speculation" as it is called and we do not want that.

10,646. Then with regard to the suggestion as to trial at assizes?—If the rule of having all divorce cases tried in London is altered, then it is just as right to have cases tried at the assizes as in the county court in the locality, and every case is more satisfactory if tried in its own locality. I think it is the inherent right of a party to be tried in his own locality.

10,647. I think nobody suggests all cases should be taken from London?—Well, having a case tried at the assizes and the early proceedings instituted in the district registries would meet the question of cost in cases intermediate between the very poor and the wealthy. The very poor might go to the county court, and others with incomes, say, of 250*l.* or upwards, finding London costs heavy, would be helped by being able to go to the assizes.

10,648. Then you suggest the district registries should be utilised for starting proceedings practically the same as in an ordinary action?—Yes, we are very strong on that in Liverpool because the Admiralty and the Chancery work are all done most satisfactorily in Liverpool.

10,649. The Admiralty registry in Liverpool was established in 1870?—Well, I expect your Lordship knows the date better than I do.

10,650. Well, your point is that the district registry might just as well be utilised for divorce actions as civil actions?—Yes.

10,651. This is apart from the county court proceedings?—Yes.

10,652. And it might be so even though the trial took place in London?—Yes.

10,653. Though you would advocate it should be tried at the assizes?—Yes. If I may say so, parties would have the advantage of the solicitors who start the proceeding being in it right throughout the trial, instead of part being done in London by an agent and part locally.

10,654. Now, with regard to the separation orders. The court you speak of is the court in the Wirral district?—Yes.

10,655. In which you are clerk to the justices?—Yes.

10,656. Up to June 1909, for the year before that you had had 52 summonses?—Yes.

10,657. That gives one person in every 1,250. That, you say, shows one person in every 1,250 living apart from husband or wife during at least a portion of the year, and having his or her case before the justices. Is that so?—Yes; there are two persons on every case—husband and wife—and I think my figures are right.

10,658. What about the possibility of their having returned immediately on the summons being served?—I only said for a portion of the year; "during at "least a portion of the year."

10,659. Then you make an estimate in this way: "If the persons living apart in respect of orders made "in previous years, and in cases where no proceedings "under the Act of 1895 have been taken, be estimated "at only four times the number who have been before "the court in one year, it works out that one "person in every 250 of the population is a married "person living apart from his or her wife or "husband." Do you think that is sound?—We tried to test it on the committee as much as we could, as it is a startling figure, but there are a great number of persons living apart from their husbands and wives, and we have a number of cases of orders given several years ago, where the parties are still living apart in our district. Then there are the well-to-do people living separate, and then wives deserted by husbands where no proceedings have been taken. It is a very large number of people.

10,660. But even where these orders are made I suppose there are cases where the people come together again?—Yes.

10,661. Have you been able to separate those who have come together and those that are still living apart?—Yes; out of the 52 cases during that year 34 maintenance orders were made out, and only five of those have come back, as far as I can trace them; and I got the police to help me trace them.

10,662. All but the five are still living apart?—Yes, we believe so.

10,663. Are those orders for separation or maintenance?—Almost entirely orders for maintenance. Since Dodd *v.* Dodd we have hardly made any separation orders.

10,664. Then you think the maintenance orders have the effect practically of separation?—Yes, the parties are separated before they can come to us. They must be living apart before they can institute the proceedings, and it means that they are not living together.

10,665. There is nothing in the order to prevent their doing so?—No.

10,666. But in fact they do not?—No; in this large proportion.

10,667. Do you find the results are disastrous, or not?—It is a very difficult question to give any accurate particulars on. I have asked the police and some honorary lady missionaries and others what their view is. They say that the separated wife is, in their opinion, in much the same position as a young widow—a woman who is deserted is in danger; there is the difficulty of means. She is there, perhaps, with children and a limited income—10*s.* a week, with a home to keep up; and very often she takes a lodger, and then there is trouble.

10,668. And with regard to the other side of the case—the man?—That I have not much experience of unless there has been unfaithfulness before when they have continued living in adultery. I have known one or two cases.

10,669. With regard to the revocation orders; you have not had many?—We have had very few. With regard to enforcing orders I should like to say a word that is not on the proof. In the year 1909 in my court we made 15 committal orders for nonpayment. Three of those paid at once. In 12 cases, but only nine individuals (that is to say, three individuals twice) they went to gaol, and one of those paid in gaol. To show the difficulty of drawing conclusions from the figures, I mention one case in which a man was in gaol and the money was paid by the woman with whom he was living in adultery when apprehended. Since he came out he has gone back to and is cohabiting with his wife, although the other woman paid the money.

10,670. You do not issue free summonses readily; you think paying the fee is a test of genuineness?—Yes, I am strongly of that opinion.

10,671. Then as to publication of reports. Have your committee come to any definite conclusion?—We are all against publishing reports—except the names of the parties and the result—in the public interest.

10,672. Just tell us the grounds that were urged for taking that view?—Principally what we see in the papers, and on the placards of the contents of the papers; we think it is used for prurient reasons and to induce people to read this wretched evidence, and that it does a great deal of harm.

10,673. Do you believe in Liverpool that publication really acts as a deterrent against misconduct?—I think not very much.

10,674. You think the publication of names locally might assist in that direction?—Yes, I think that would do almost as much as the whole of the evidence being published.

10,675. However, when they are tried in London, you say very little is heard locally unless the parties are well known?—A short paragraph is generally telegraphed down, but only a few lines.

10,676. And you suggest also the same rule applying to affiliation cases?—That I have seen a good deal of the evil of in my own court.

10,677. In what way?—In publishing the reports of affiliation cases; some papers very much more than others—foolish reports which do a good deal of harm. They are all read by young people and others.

10,678. With regard to the question of amendment in the law; you have only dealt with some minor matters. One we have already had over and over again—a month before proceedings under the Act of 1895 is too long?—Yes, that is founded on the Bastardy Act of 1845, and the same term applies there. I feel sure it is too long.

10,679. Both in that and the other?—Yes; the reason I have given is, that if the man can afford it he should pay at once, because the woman and the child want the maintenance day by day and week by week; and if he is a poor man it is much better for him to pay the sum weekly than have a large sum to pay a little later.

10,680. I do not find anything in your proof as to the grounds of divorce being amended; I do not know whether you have gone into that?—I cannot speak for my committee on that.

10,681. Did not they consider it?—They thought it was not their business to consider it.

10,682. But if you have considered it yourself you may as well give us your views?—I am old fashioned enough to wish not to extend the grounds of divorce very far. I should, I think, like to see cases of permanent incurable lunacy dealt with, but I think hardly anything more.

10,683. The other two that have been principally put forward are long sentences for crime and lengthy wilful desertion?—As to long sentences for crime, I think people marry for better or for worse; and therefore, unless it was a sentence for life—and even then, I am doubtful, I should not recommend it.

10,684. And the other point. Is Liverpool a part from which people are apt to do what we have heard of—disappear to America and the colonies?—There are a great many cases in Birkenhead and Wallasey, and the Wirral district, where the husband goes to America.

10,685. Have they been traceable?—We have known they have gone. I have known it through members of my family district visiting, and the police court.

10,686. Is it a matter of common occurrence?—Rather common.

10,687. What is your view with regard to desertion in such cases?—I should hesitate to give divorce for that alone. Might I mention one other matter on the evidence given since. As a magistrate's clerk, I do not think lay magistrates and their clerk would be an advisable tribunal for hearing divorce cases. I think my colleague, Mr. Saunders, from Liverpool, thought they would, but I think they are better done by a county court judge or a High Court judge.

10,688. You do not agree that the lay magistrates would be a better tribunal than anybody else?—Not for divorce. I think they are for separation orders probably.

10,689. Why would you distinguish?—I think a divorce (a permanent separation) is more serious, and more serious in its effect on the children.

10,690. And you think the other cases can be dealt with more roughly and more readily?—And not only that, but better. We have means of getting knowledge of the circumstances and seeing the parties again; many people come I have seen before, and the police-court missionaries know them, and we can exercise a lot of private influence. They have very often been up for assaults or drunkenness before the separation.

10,691. (*Judge Tindal Atkinson.*) You suggest there should be no jury in divorce cases. I suppose you would allow the judge to order that a jury be summoned if in a particular case he thought it necessary?—I should think it would be reasonable certainly. We want to save expense more than anything in these county court proceedings.

10,692. There are some cases in a county court in which a jury may be necessary owing to conflict of evidence?—They are helpful.

10,693. Is not there another point strongly in favour of the county court jurisdiction, that the judge would be readily accessible in cases where the custody of, and access to, the children have to be dealt with?—Yes.

10,694. Does not that often arise when perhaps children are subject to the control and influence of the father where those children should be removed as quickly as possible?—Of course a county court is very much more accessible than any High Court judge can be in the provinces; the courts are held oftener.

10,695. In cases where the income exceeds 250*l.* per annum you think the party might go to the assizes?—Yes.

10,696. Do you mean that there should be concurrent jurisdiction between the county court judge and the assizes in those cases, or would you exclude the county court?—Our committee thought the county court jurisdiction should be limited to 250*l.*; above that there should be concurrent jurisdiction between the assizes and the London court.

10,697. You would give the county court jurisdiction up to 250*l.*?—Well, 200*l.* was the actual figure that our committee thought sufficient.

10,698. Do not you think that is rather small?—No, I think a man who has 200*l.* a year or a wife who has an income of 50*l.* a year and 100*l.* of her own property could stand the cost of a case at the assizes in her own county.

10,698*a*. Suppose they had come to London in a defended case, the least they would do it for would be 100*l.*, and in many cases it would be a great deal more?—The assizes are less than London.

10,699. But there is this matter connected with the assizes that strikes me as a difficulty. You can never ascertain in the assizes when your case will be reached?—No, not to two or three days.

10,700. Owing to the impossibility of knowing how long a case—particularly a criminal case—will last?—But one can generally tell within two or three days; and the distance from that to the home of the parties is not as great as coming to London, at any rate from the north of England.

10,701. Take the northern part of Yorkshire. If they had to wait two or three days in Leeds would it not be prohibitive?—It would be large, but not so large as coming to London.

10,702. Now, you think the proceedings could be done in the district registry. In Liverpool and Manchester you have the district registry at hand, and a very efficient registry it is?—Yes.

10,703. But have you considered the large agricultural county court districts where there would only be one district registry in the whole district as there is in mine. Would not that make a difficulty in requiring that they all should be dealt with in the district registry?—Not requiring that they all should be; there is still the option of applying in London; but we only propose to increase the facilities with a view to decreasing the cost.

10,704. But take Northumberland, there might be only one?—Well, the possibility of going to Newcastle assizes would be a little chance of saving money as against the present state of the law.

10,705. Yes; but the question is whether it would not still be prohibitive if you take them to the assizes?—It might be advisable to allow a larger sum than 200*l.*, but our committee did not wish to extend this very far.

10,706. Supposing the condition attached to that that over 250*l.* the parties should be at liberty to bring the case in the county court by leave of the High Court judge in London?—I have not considered that; but individually I do not want to give the increased facilities very far; but if that was the High Court judge's view I should accept his opinion. If the judge of the High Court said they might be tried in the county I do not think we should disagree.

10,707. (*Sir George White.*) You said there would be, in your judgment, far more cases of inquiry if it were not known beforehand that the cost would be prohibitive. Is that ignorance an advantage or otherwise, in your judgment?—They want a divorce—many of them, and they know they cannot get it; and I think, on the whole, they would be better to have the rights that their richer fellow citizens have.

10,708. Notwithstanding your general desire not to increase facilities, you would advocate that?—Yes; they are citizens of the same country, and should have equal treatment.

10,709. Then you implied that no term of penal servitude would, in your view, justify a divorce; not even penal servitude for life. Is that so?—I excepted penal servitude for life.

10,710. But five to ten years?—Then I think the wife or the husband should wait, and try and help the partner, when he or she comes out of gaol.

10,711. Then, you said, a man who had 200*l.* a year could stand the cost of the High Court. Evidence has been given that that may reach 80*l.* or 100*l.* Is not that a very heavy sum for a man with 200*l.* a year and liabilities upon him to find?—I think, with a little saving or economy, they could find 70*l.* or 80*l.* Most men have friends that they do not know of till they look for them.

10,712. (*Mr. Spender.*) When you say your court, do you mean the Wirral Division of Cheshire?—Yes, the Birkenhead side of the river.

10,713. We have had a good deal of evidence from other witnesses suggesting that after separation orders have been taken out, the pressure of economic reasons brings the parties together again—sometimes reluctantly, but in many cases effectively. You say only 5 out of your 34 cases that you can trace have been brought together again?—That is so; but where there was no appearance on the summons in 9 out of the 52, I have no doubt that means they have gone together after the information was laid.

10,714. Then you would add another 9?—Out of the 52. There was no appearance on the hearing of the summons.

10,715. Then that somewhat brings up the average?—Yes.

10,716. Would you say that your district is typical of urban districts of Liverpool, say, or are your conditions less ——?—No, we are typical, I think. We have a dock population, and a large residential population, and some rural population as well. We have all classes pretty much.

10,717. You seem to have a large number of people living apart. You say one person in every 1,250?—It is a very large average. It was very surprising when one saw how the figures worked out.

10,718. (*Chairman.*) You have not got the Liverpool figures with you?—No, my Lord; we knew Mr. Sanders, the magistrates' clerk, had given evidence; he is on our committee, and we saw each other's proofs.

(*Chairman.*) Let me thank you on behalf of the Commissioners for your evidence. It is very useful.

Mr. Philip Baker called and examined.

10,719. (*Chairman.*) You are a solicitor practising in Birmingham?—Yes.

10,720. You are a member of the committee of the Birmingham Law Society?—Yes.

10,721. The matter of your evidence has been considered by the committee, and it has been approved by the committee?—It has been approved first by a sub-committee and afterwards gone through and pared down once more, and the proof you have before you is approved by the general committee.

10,722. I should like to add your own personal experience, because you say your notes "are based on "many years of intimate experience in the actual "working of the Acts giving power to justices to make "judicial separation and maintenance orders, and also "on a knowledge of divorce practice." That is your own personal practice?—That is so.

10,723. And your firm's books show that in six recent consecutive months you acted in 105 matrimonial causes?—That is so.

10,724. And you also settled many others without recourse to legal proceedings?—That is so.

10,725. Do those 105 matrimonial causes mean partly in the Divorce Court and partly in the magistrates' courts?—Yes, my Lord; chiefly magisterial, of course.

10,726. First of all, with regard to the conferring of jurisdiction on the locality. What have you to say about that?—I agree with the report that you have before you, my Lord, that "the institution of a local "divorce court attached to populous areas is desirable. "Its object should be to give relief in approved cases "at a cost which will not make it impossible, or unduly "difficult, for persons of small means to obtain "a dissolution of marriage, and an adjustment of "domestic difficulties."

10,727. Does your experience lead you to know one way or the other whether there are cases to any extent where other people are desirous of getting some relief and cannot get it?—My experience shows me that there are a great many cases of respectable people who would be glad of the relief of a dissolution of marriage, if I might respectfully say so, in my opinion, and who should have it, but are unable to obtain it because the cost is too great.

10,728. You go on to say the cost would be about 50*l.* in undefended cases; that the *in formâ pauperis* procedure is not sufficient?—No, my Lord. We have only had two cases in 20 years of *in formâ pauperis*. And one case was a case which was following criminal proceedings, and the expense had to be borne by charitable people, who were sorry for this woman and enabled her to get relief.

10,729. If solicitors are employed they only get off the court fees?—Yes, my Lord. In that case the actual cost in one way and the other of obtaining a divorce absolutely *in formâ pauperis* amounted to about 20*l.*

10,730. Do you mean that allowed anything for the solicitor?—I should say disbursments.

10,731. Actual out-of-pocket?—Yes, my Lord.

10,732. Has that fact of the present difficulties led your committee to any conclusion as to the establishment of a local court?—It has, my Lord.

10,733. What is that?—That a local court should be established, attached to the county court, and in default of that to be attached to the assize court, and in default of that that it should be a circuit judge travelling from court to court from the Divorce Division.

10,734. You put the county court first as the easiest?—On the ground of expense entirely, my Lord.

10,735. Your note here is that the present local machinery of that court points to its being capable of the necessary adaptation?—Yes.

10,736. Is that what you mean?—Yes, that is my society's recommendation.

10,737. The officials knowing the district and so on. Do you gather from your experiences that people who would not personally be able to go to the High Court because of costs would resent having to go to the county court?—No, they would not resent it, my Lord.

10,738. You think they would accept it readily if it were approved?—Yes.

10,739. Then this point of control of the Principal Registry so that the procedure should be regular?—That is a point on which one feels rather strongly, my Lord. You are giving power that not only affects the person, but which may affect several other persons, sometimes several other families, into the hands of a somewhat irresponsible class, and my committee feel—and I feel—very strongly, my Lord, that some initial—shall I say censorship—should be observed before the proceedings be allowed to go on. In the High Court of Justice one has summonses for direction, and that has a similar sort of effect, that vexatious or improper proceedings should not be launched against a person without some proper censorship.

10,740. But I gather you mean, assuming the county court were given jurisdiction, the papers should be looked through by an officer of the Central Registry in London to see everything is in order?—Either in London or that the local registrar before permitting the proceedings to progress go through the papers and see if there is a *primâ facie* case to proceed upon.

10,741. A proper check to see that the process is not being abused?—That is so.

10,742. Then you propose that right of audience should be granted to counsel, solicitors, and the parties of course?—That is assuming that the county court had jurisdiction to deal with divorce matters.

10,743. With regard to damages. Is it the view of your committee that any damages should be recoverable, and, if so, if it should be limited?—In the view of my sub-committee 100*l.* was fixed as a maximum. Before the general committee the recommendation was that "there should be no limit to the amount of damages "recoverable from a co-respondent in the county "court." I differ from the recommendation of the general committee. I agree with the previous witness that if the county court, or if a cheaper jurisdiction is to be given to these people, the question of damages should not enter into their consideration. The question of relief is what they really seek.

10,744. You would abolish the right to claim damages altogether?—I should either abolish it altogether or restrict it to 100*l.*

10,745. With regard to limiting the right to go to the Court of Appeal where the petitioner has assets not exceeding 250*l.* and joint income not exceeding 160*l.* We have heard it suggested that joint income presents a difficulty, as the wife may not know what the husband's income is. Have you considered that point?—I think there should be a limit, my Lord, and I think the 5*l.* a week limit for the petitioner, if he be the husband, would be a satisfactory one.

10,746. You have here the "assets" of the petitioner. Does that mean the income?—That is the recommendation of my committee. I go further than that personally.

10,747. Your committee recommend the assets should not exceed 250*l.* and the joint income 160*l.*?—I suggest 5*l.* a week should be the income of the petitioner, provided he be the husband. With regard to the wife, if she had separate estate up to 500*l.* that she should avail herself of the county court relief, but not beyond. With regard to the joint income, I do not deal with that point, my Lord.

10,748. We are told that might lead to a difficulty?—Yes, I am afraid it would.

10,749. Cases, you think, might be taken either by a judge and jury or without a jury?—By a judge and jury; allow it to be optional, my Lord. Give the option to either party to elect.

10,750. And that there should be power to remit to the High Court?—Yes, I strongly recommend that.

10,751. Your suggestion as to the venue is the district where the petitioner or the respondent has a settled place of abode?—I can conceive of a case where it might be very convenient in certain cases to allow the venue to be where the misconduct—all or part of it—may have arisen. If you remember, in one of the Married Woman's Acts—magisterial Acts—it gives that power of jurisdiction where all or part of the

matters complained of may have arisen; and I can conceive some cases where it might be very convenient, especially on the ground of expense. Supposing the misconduct happened in London, and there are a number of witnesses living in London to prove it, it might be convenient even if the parties lived away from London that the proceedings might be taken in London.

10,752. Well I do not think we need trouble much about this. If the jurisdiction is to be conferred the machinery would require a good deal of consideration. "Appeal from any decision to be to the Divorce Divi- "sion of the High Court. In every case the King's "Proctor should be communicated with, and enquiries "should be made by him in accordance with the "present practice"?—With regard to appeal, might I say, assuming the county court registry had jurisdiction the interlocutory matters should be to the judge and any appeal from the judge to the Divorce Division of the High Court. Sometimes the appeals in interlocutory matters are very small and there would be no need to go to London.

10,753. Then with regard to separation orders. You state in your proof in a large proportion of the cases the parties would become reconciled within the three months?—That is so.

10,754. Have you the statistics of your district with you?—I have not.

(*Mr. Brierley.*) We have had both the stipendiary magistrate and the clerk of the justices from this district.

(*Chairman.*) Yes.

10,755. Do you find according to your experience that separation orders lead to adultery?—Not to open adultery, my Lord. I do not know anything about private adultery, but it does not lead to open adultery. It does not lead to the parties going and living in open adultery with another man or another woman in the majority of cases.

10,756. You draw a distinction between that and cases where it may lead to hidden or concealed adultery?—It may be. A woman values a weekly allowance very much and that deters her if nothing else from doing anything of an open character.

10,757. You find that the parties do not often seek relief until their relationship has been very severely strained?—In the majority of cases that is so. There is great temerity in coming into open court at all and ventilating their matrimonial differences.

10,758. You state brutality often leads to separations, but excessive drink alone does not very often bring about a separation as long as he provides a proper home?—That is what one notices repeatedly.

10,759. Have you found the present system of enforcing orders by imprisonment works well?—Extremely well, my Lord.

10,760. You make some point about the magistrate having an option?—Yes, my Lord; sometimes when a man is in default through stress of circumstances the wife has power, as I understand the law, if she is a vindictive woman, to press that the husband be sent to prison, and I believe that the magistrates have no discretion but to send the man to prison in default of payment. I am suggesting that the magistrates, when they are satisfied beyond all doubt that the man is doing his best, should have such power.

10,761. Then there was one point about the custody of the children, on which you suggest an amendment; that the magistrate should have power to enforce the order as to custody if either party disregards it. That does not exist at present, does it?—There is no power to enforce.

(*Mr. Brierley.*) I did ask a witness that a day or two ago, but they have no power.

(*The Witness.*) The magistrates have power to make an order that the wife in most cases shall have the custody of the children, and perhaps, when they go out of court, the husband says, "I shall not allow "the wife to have the children: I am fond of them;" and he will pay her the full amount of the order and keep the children; and the wife wants the magistrates' order carried out about it, and the magistrates are powerless to enforce their own orders.

10,762. (*Chairman.*) And you think where they do discharge an order on the ground of the wife's adultery, they should have power to order custody and maintenance of the children?—Yes.

10,763. How would that arise on the discharge of the order?—When the magistrates discharge the order on account of the wife's misconduct they have fulfilled their functions, as it were, and they cannot follow the children or the parties any further. The discharge of the order ends the case, as far as the magistrates are concerned. I am suggesting that the magistrates might still, under this Act, have the power to deal with the custody of the children.

10,764. To give it to either party?—To give it to either party or to a relation—that the magistrates should have power to deal with the children.

10,765. And you suggest a summons to vary should be allowed where only the custody of the children is involved?—Yes, my Lord. Sometimes after a separation order is granted to the wife giving her so much a week she may develop very bad habits; the husband might find she had become of intemperate habits, and he might wish the custody of the children, and I suggest he might take out a summons to vary the order, merely applying for the custody of the children. Or, on the other hand, after the order is made, the husband might go and live in open adultery with a woman, and the wife might say, "I object to my "children living with my husband under those condi- "tions"; and she might desire to have them placed in other custody. I have had it arise and it is very difficult to deal with.

10,766. Have not they power to vary the order for custody now?—I think not, my Lord.

10,767. What is the suggestion you make about concurrent jurisdiction?—I suggest that the police court, for the present at any rate, continue to have the powers it now exercises. Assuming powers were given to the county court or some other court, then experience would show if it could be all dealt with by one court; but at present I suggest that the police court is, generally speaking, doing good work.

10,768. Then, with regard to the question of reports. What is your committee's view about that?—That is a very vexed question. Nearly every member of the committee had a different view; but this is the general view: "There are many objections to cases being "heard in private. Assuming that in a divorce case "misconduct has been committed by one or other of "the parties, the chief punishment is the publicity. "On the other hand, there are cases with unwhole- "some details where the public (including reporters) "might well be excluded. On the whole one favours "allowing a judge discretion when to have the court "cleared." I should be in a position to add this, my Lord: "In the case of a professional or public man "or woman or a sensitive man or woman, they would "undergo almost any provocation rather than run the "gauntlet of the press publication of their domestic "troubles. This means that many people who "should avail themselves of divorce proceedings "shrink from doing so, and either live separated for "the remainder of their days or cohabit under most "unsatisfactory conditions. There is no doubt, in my "opinion, that the publication of divorce proceedings "materially affects the number of divorce suits. The "reading of details, I believe, has a baneful effect upon "persons of all ages; one feels that the constant inter- "mingling with persons and with facts of an immoral "or degrading character has the tendency of lowering "the moral standard. It is often called being 'worldly "wise'; but such wisdom is not necessary in the ordi- "nary man or woman is most walks of life." That was the view that one of the members of the committee expressed, and I made a note of it at the time.

10,769. Do you adopt that?—No; I adopt the shorter view that I read to you, my Lord. I do not go as far as that.

10,770. Only one other matter. Your society have not gone into, and do not wish to offer any suggestion about, amendments of the law on the question of causes, nor will they make any suggestion as to practice or procedure. Is that what I am to take as the position

the Law Society of Birmingham adopt?—That is the view the Law Society of Birmingham adopt, my Lord. Personally, I should recommend divorce to be available on the ground of insanity, and open adultery, and desertion, in such cases as you dealt with in examining the other witnesses, where a man leaves his wife and perhaps goes to another town and takes no steps to resume cohabitation or have his wife to live with him, or even quits the country—where he shows fully that he does not intend to resume cohabitation. I think it is only fair for the wife to take that as a sufficient ground for applying for a dissolution of marriage.

10,771. I rather gather the Law Society do not make any recommendation about it?—That is so. The sub-committee agreed to the change of the law on the ground of insanity only, but the general committee gave the recommendation that you find in my proof.

10,772. Which?—They have no suggestion to make.

10,773. Does that mean they would leave the law as it is, or that they do not wish to offer any suggestion?—They do not wish to offer any suggestion.

10,774. (*Mr. Brierley.*) Just one question. You have mentioned the difficulty that sometimes arises in practice of enforcing the order for the custody of the children. Do you think it would be well to have some power for imposing a penalty in cases where the order as to non-cohabitation by either husband or wife is disobeyed?—A penalty?

10,775. Yes?—Yes, with the alternative.

10,776. At present if the husband thrusts himself upon the wife after an order for non-cohabitation is made she has really no remedy unless he creates a disturbance outside the house or anything of that kind. Is not that so?—That is so. There is a suggestion that one could make for what it is worth, and it would come under the heading of "Place of payment under "judicial separation orders. Women often complain "that they suffer considerable annoyance and even "acts of violence by their husbands attending at the "wife's abode to pay the weekly sum ordered. The "wives often request that these payments should be "made into court as are debts due under a county court "order. Provision should be made for this, both in "the police court and the county court for these payments to be made there." And I draw your Lordship's attention to the case of Hetherington *v.* Hetherington showing what often happens when these husbands go presumably to pay the money, and perhaps the wife becomes pregnant as the result, and then the onus is cast on the wife to show that the child is a legitimate child, which is very often a very difficult matter. That is a recommendation which to a certain extent deals with it.

10,777. (*Judge Tindal Atkinson.*) With regard to the custody of the children: do you agree with the last witness that in the event of the county courts having divorce jurisdiction, they would have a very useful jurisdiction in having the direction of the custody of the children?—Yes, certainly.

10,778. And does that form an important consideration in your mind in transferring divorce proceedings to the county court?—It does.

10,779. Then you recommend that there should be a power in the county court to remit cases to the High Court?—I do.

10,780. Perhaps the High Court judges would not approve that the county court should have power to remit their cases to the High Court?—The police court now has power to remit cases to the High Court, which may be more conveniently dealt with in the High Court, and I am suggesting that the county court has similar powers to remit to the High Court exactly as the police court has now. There are certain cases where intricate marriage settlements involving a large sum of money might be involved, and although the means of the parties might not be great the sum involved in these settlements might be considerable, and the judge of the county court might think that that would be a case that should be dealt with in the High Court.

10,781. (*Mrs. Tennant.*) You say the weekly allowance to the separated wife deters her from immorality?—Yes.

10,782. What of the case where the allowance is not paid? She has not that deterrent, and those are the cases in which she is most liable to temptation, I suppose?—Yes, I think so.

10,783. You agree there are those cases?—Yes.

(*Chairman.*) I think that is all. Thank you very much for your evidence.

Adjourned until to-morrow morning at 10.30.

Winchester House, St. James's Square, London, S.W.

SIXTEENTH DAY.

Tuesday, 22nd March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. CHARLES WILLIAM PANTON BARKER called and examined.

10,784. (*Chairman.*) Are you a solicitor?—Yes.

10,785. You have acted as clerk to the magistrates for the county borough of Sunderland since 1881?—Yes.

10,786. In 1901 the population of Sunderland was 146,828?—Yes.

10,787. I do not know what bearing it has, but there were 25,574 married females, according to the census, and 24,734 married males?—Yes.

10,788 I do not know why it does not exactly correspond?—Partly because there is a larger seafaring population, but over and above the sailors there is an excess of married females, I believe.

10,789. Since the Summary Jurisdiction Act of 1895, have you had applications made in your court, and are the orders set out in the table in your proof?—Yes.

10,790. These tables will appear on the notes, so that we need not go through them now?—The table is as follows:—

	Applications.	Orders.
1896	36	16
1897	42	37
1898	52	28
1899	39	29
1900	69	46
1901	85	63
1902	85	54
1903	71	52
1904	85	64
1905	91	67
1906	102	67
1907	102	74
1908	68	49
1909	86	36
	1012	682

10,791. I notice those orders do not differentiate between maintenance orders and separation orders unless the analysis on the next page does so?—They are all separation and maintenance.

10,792. Combined?—Yes.

10,793. You have not the orders separate, to show which are for maintenance and which are for separation?—They are all separation and maintenance, every one. There has been no order made for maintenance without separation.

10,794. Is that so?—That is so.

10,795. Have they not adopted a different practice since the decision in Dodd *v.* Dodd? Do not the magistrates in Sunderland only order maintenance in cases of desertion?—The order runs that the wife shall be at liberty to live separate and apart.

10,796. Is that so in all cases?—In all cases.

10,797. Why do they not simply make a maintenance order where it will be sufficient?—Because unless the wife were willing it is undesirable for the husband to return against the wish of the wife, having deserted her.

10,798. At any rate that is the uniform practice. Then you give an analysis of the applications?—Yes. The following is an analysis of the applications made during the year 1909:—

	Desertion.	Cruelty.	Maintenance.	Aggravated Assault.	Total.
Summonses issued	40	40	6	1	86
Dismissed	7	6	1	—	14
No order	3	—	—	—	3
No answer	5	16	—	—	21
Withdrawn	2	2	—	—	4
Not served	3	—	1	—	4
Remaining adjourned.	1	1	1	—	3
Bound over	—	1	—	—	1
Orders	19	14	2	1	36
	40	40	5	1	86

10,799. Then you say it will be seen from these figures that out of 86 applications only 36 orders were made. Is that so?—Yes.

10,800. That is in the year 1909. Then in 25 cases the application was abandoned or withdrawn, in four cases the summons could not be served, and three cases still stand adjourned?—One has since been reconciled.

10,801. The magistrates refused to make an order in 17 cases, whilst in one case they bound the husband over. I gather from your proof that the magistrates do not like making separation orders except where the wife's safety is in danger, but that seems not to be quite consistent with what you have told us, that in desertion cases they make the separation order?—Or if it is unreasonable to expect them to continue cohabitation with their husbands.

10,802. It may be reasonable provided he will come back. That is why I did not see why you do not differentiate between her safety and where she simply wants maintenance?—If the husband has deserted the wife, she generally establishes some business, and desires to continue in it. I can give you a case very strongly in point. A woman came to me a few months ago and told me her husband was coming back, that he would put her in the family way, he would beat her and starve her, that she could bear the beating and the starving, but she could not bear to bring another baby into the world to be beaten and starved. Where there is desertion such as that the magistrates will make the order. It should remain with the wife to say whether or not she will take the husband back.

10,803. If that practice is followed in many cases Mr. Roberts's inferences would not be correct. Do you know whether the practice in other districts near yours is similar?—I do not.

10,804. You only know your own. Of the 36 orders only 13 were taken up. You presume in the 23 cases remaining the wife has never taken up her copy of the order and may have resumed cohabitation? That is a mere presumption. Have you looked into the cases personally, or had it done for you to see what has happened?—I have not, but my experience satisfies me that that presumption is correct because if she wants the maintenance and is living apart, she comes for the order in order to get the maintenance.

10,805. Do you make the maintenance payable to the wife or to an officer of the court?—To the wife.

10,806. You pass on to notice the applications under the Act of 1902; there were 8 for habitual drunkenness, and in 6 cases an order was made?—Yes.

10,807. In only one case was the applicatien made by the wife, and no order was made: they are mostly by the husband against the wife. On the whole you think the Act has worked satisfactorily?—Yes.

10,808. Then you proceed to make a comment on what you call a class of insolent women. Will you tell us the point you make there?—I cannot suggest any point for the amendment of the law. The fact is there, there are women who seek protection. It does support the suggestion which I make in the following paragraph.

10,809. Would you just read the paragraph, to point it out?—There, however, exists a class of insolent lazy women who know of these provisions, and, conscious of the protection afforded by them, defy their husbands, run them into debt, pawn everything available, drink and neglect their houses, and sometimes wilfully provoke their husbands to strike them or turn them out, and then apply for a separation order, not really for their own protection, or with any real determination to live apart, but to establish their independence and effect their husbands' humiliation. It is the applications of this class of women which account for so large a proportion of dismissals and of orders not taken up. I am of opinion that it would be an advantage if the justices were given the option, in cases of desertion, persistent cruelty, and neglect to maintain, of committing the defaulting husband to prison, either in addition to or in lieu of making a separation order. These women hesitate to apply for the punishment of their husbands. This class of women, whilst they hesitate to seek to have their husbands punished, will seek to have a separation order simply for the purposes of humiliation. Often a retort upon the husband having cried them down, as they call it in the newspaper when he advertises that he will not be responsible for her debts. There are many husbands who deserve punishment, and I believe in the great majority of cases in which separation orders have been granted, such separation orders should not be made until the husband has been punished for his desertion, his persistent cruelty

or neglect, and if the magistrates in a *bonâ fide* case of real desertion or persisent cruelty, or of starving them, or neglecting to maintain, had the power to give the husband six months' hard labour, the women would not lightly prosecute, and husbands would fear to incur the penalty, and having once incurred it in many cases he would reform.

10,810. Would it not be a simpler course, if the magistrates thought that was the class of case, to dismiss the summons?—They do dismiss the summons, but the punishment, I believe, would be a very valuable improvement, the power to punish.

10,811. You make a comment upon the action of the guardians. What is the point there?—Women who have been deserted or whose husbands have left them chargeable to the guardians, apply to the guardians for relief. The relieving officers, in their anxiety to reduce relief, refuse to give them relief, and send them to us to get a separation order and a maintenance order. The result is that many men who are really liable to be punished under the Vagrant Act escape that punishment, and the wife simply gets the civil order instead of the man undergoing the criminal punishment he ought to.

10,812. Your note is that the most worthless class of husband thus escapes punishment for a criminal offence which he richly merits. That is your remedy?—My remedy is to introduce into the Summary Jurisdiction Act a clause empowering the magistrates in all cases where they find there has been desertion, cruelty, and neglect to maintain, if they think fit, to send the husband to prison for such desertion, neglect, or cruelty, instead of or in addition to making an order for separation and maintenance.

10,813. You go on to say you have had several cases of women resuming cohabitation and coming back two or three times. Does that lead you to suggest any remedy for that?—No, that rests with the woman herself. It is almost impossible to protect her from herself.

10,814. Very few orders have been set aside, and none in 1909, on the ground of adultery of the wife. You proceed to suggest that the magistrates should have some further jurisdiction in divorce cases?—Yes.

10,815. What is the suggestion you make?—I think that if the magistrates have to continue to exercise that jurisdiction in separation, they should also, subject to certain limitations and restrictions, have jurisdiction in divorce. The suggestion I make is that in cases which are of the class of pauper cases, the magistrates should take the depositions and find on the facts. Such depositions and findings I think should be recorded in the divorce registry, and the decree absolute, speaking of the present practice, made therein if the depositions warrant it. The magistrates at present try issues quite as serious as that of adultery. The objection to divorce is because of the serious moral aspect of the result, but the trial of the issue is very simple compared to many issues which the magistrates now have to try, and I believe that they are quite as competent as any tribunal to try such an issue, subject to the necessary review. I believe that in a large proportion of cases, in the interval pending the finding by the justices and the making of the decree absolute, the parties would probably condone the offence and the application for a decree absolute would not be made, but I think that the magistrates up to that point could well exercise all the functions that would be thrown upon them by my suggestion.

10,816. Your suggestion is that the court in London should have the facts presented from the magistrates' findings?—Yes.

10,817. And they could deal with it as they thought right?—Yes.

10,818. Either remit it for a re-trial, or make a decree. Have you considered the question of conferring jurisdiction on the county courts? Has that come within your department?—I have, as a member of the Law Society. I think that the magistrates' court would be the more popular tribunal, and I believe it is. The county courts sit only once a month, they have as much work as ever they can get through, and the justices are more conversant with the ways of the people and their habits of livelihood than the county court judges. I should think that the magistrates are quite as efficient, and there would be less expense. The fees in the county court are much higher than those in the police court, and I think that the justices could do it probably as well as the county court.

10,819. Are you speaking of the class of people who now come before the magistrates? Have you considered the position of those who do not like to go to the police court and do not come there?—The limitations I have suggested as to the income, 3*l.* a week, are the class of people who do come for separation orders, and if they come for separation orders I think they also might have the opportunity of coming for divorce.

10,820. You go on to say that in cases of desertion where a man has left his wife he is found living with another woman: is that a matter of your own experience?—In very, very many cases indeed—a very large proportion of cases.

10,821. You also say that many women, who have obtained separation orders and still more who have separated from their husbands without orders, are living with men who are not their husbands; is that so?—Since I wrote that I have re-considered it. Not many women who have been separated from their husbands are living with men who are not their husbands. Very few women who have been separated with orders are living with men who are not their husbands, but a very, very large number indeed of women who are separated from their husbands are living with men who are not their husbands, and men who are separated from their wives are living with women who are not their wives. Very generally indeed both the woman and the man are married people. The first marriage has proved a failure, and they, without incurring opprobrium in their district, live and live respectably with another man. They find it necessary to have some man, and they live together and they live without shame and without reproach. We had only last Christmas an inquest. The man was a married man living with a woman who was a married woman. The husband of the woman was living with another woman, and the wife of the man was living with another man. These people had a family. They were living decently, but during the distress they applied for relief. The guardians would not give it, because they were living in adultery, out of the workhouse, and the verdict at the inquest was that the man died from natural causes accelerated by want of proper nourishment. I could multiply these cases, I am sorry to say, very very largely.

10,822. What is the remedy you are endeavouring to suggest for that state of things?—That these people should have divorce.

10,823. You think that is necessary—that that is desirable?—I think so. Here is one case which is present to my mind which was brought to my notice by the guardians. A man was deserted by his wife: she went to live with another man and left her husband with a baby. He took a housekeeper who was a married woman, and they lived together and had four children, and as soon as his wife died he married her. Had he been in a position to legalise his relationship at the first I believe he would have done it. I believe that is so in very many cases.

10,824. I gather from that that you would place the facility for getting these divorces within the reach of these people?—Yes.

10,825. You have made your suggestion as to how it should be done. I think that is practically all there is in your proof?—I should like to suggest that there should be power to give divorce where persons have been sentenced to penal servitude. I have known several cases where persons have been sentenced to penal servitude where the wives, during the absence of the husband, have contracted alliances. I had a very startling case of it. I found in the streets a little girl with two strolling players. She was evidently not their child, and I inquired into their circumstances. I found she was the daughter of a woman whose grandfather had left a sum of 7,000*l.* for his daughter for life and then to her children. The mother of this child had contracted an improvident marriage. Her husband was convicted and sent to penal servitude several times.

This child was born, the mother died, the grandmother died, and this child became entitled presumptively on attaining 21 to the 7,000*l.* I applied to the trustees for maintenance, but they refused it. I applied to the Court of Chancery for the child for an order for maintenance. The trustees were able to prove that immediately after his arrest, and whilst awaiting trial, it was evident this child had been begotten by a man who was not the mother's husband. She therefore got no maintenance, and she did not get her 7,000*l.* which she would have had if this woman had been able to dissolve the marriage tie when her husband first became an habitual criminal; she would probably have contracted a decent marriage, and this child would have been legitimate.

10,826. Have you any further suggestion to make on any other grounds of divorce?—No, I have no other suggestion to make.

10,827. (*Lord Guthrie.*) Would you tell me about the magistrates' meeting. How often do the magistrates meet?—Every day.

10,828. How is the court selected, or is there any selection at all?—No, there is only a rota; there is no selection, except, of course, for lunacy and licensing.

10,829. It is entirely fortuitous how many sit, or who they are?—Yes.

10,830. You said there was a rota. Will you just explain about that?—In Sunderland we have some 35 acting justices, and they divide themselves into four batches who sit every four weeks.

10,831. Do they sit for four weeks continuously?—No, every fourth week each batch comes on.

10,832. And they sit for a week?—Yes.

10,833. How many of them?—The bench generally consists of three.

10,834. Have you any number who have legal training?—Yes, we have a solicitor on the bench.

10,835. You may have a bench on which there is nobody with legal training?—Practically you may take it that the bench has no legal training.

10,836. Would you have selected magistrates to deal with questions of divorce if your plan were carried out, or any magistrates?—I am not inclined towards selected magistrates, but I do not feel strongly on it. The selection of the magistrates generally results, except in the licensing committee, in this, that at the sessions called for the selection of justices, the magistrates who appear and who apparently take an interest are the magistrates who are appointed. I do not think that the selection of justices would be likely to obtain any special qualification.

10,837. Do you have magistrates who take a special interest, and in that way acquire experience from sitting very often, or do they all take their turn?—They may all take their turn. The only work in which the selection of justices has been found to be valuable is that of licensing, where a committee has been appointed who have devoted themselves to the work.

10,838. Who is the chairman?—The mayor, or the senior magistrate.

10,839. He may have legal training or he may not: generally he has none?—Generally he has none.

10,840. Do you ever have difficulty in separation cases from questions of collusion?—No.

10,841. We have been told that on the question of divorce there is very great difficulty arising from that cause. Do you think that magistrates would be suitable to decide a question of that kind, if it exists in those cases?—They would be quite suitable to give a finding on the facts as to whether or not there was collusion.

10,842. Under the advice of the clerk?—Yes.

10,843. Would not the suitability of the magistrates as a court in divorce a good deal depend upon the qualifications of the clerk?—I think you may take that more or less in all cases.

10,844. (*Judge Tindal Atkinson.*) You might be landed in this difficulty in country districts, perhaps, if the justices took divorce, that some of the justices might be opposed to all divorce altogether, and others might think that divorce should be freely given. Then on your divorce day you would have a bench curiously constituted for the purpose of administering justice would you not?—I do not think that difficulty arises. The justices, whatever their private feelings are, administer the law. Whatever the law was, the justices, whenever they come on to the bench, sink their private feelings and endeavour to administer the law.

10,845. Would it meet your view supposing at the quarter sessions they made a rota of justices for the purpose of divorce, and that two justices should be appointed to sit with the county court judge to take the divorce cases, so in that way you would get your mixed tribunal? Perhaps you have not thought of it?—I do not think you want a mixed tribunal. If you are going to give the county court judge jurisdiction, leave him his jurisdiction. You do not want to mix a county court judge and the justices.

10,846. The advantage would be, supposing there is no jury, you would get two men of the world who would be able to deal with the question of fact, together with the judge. That would be an advantage, would it not?—It does not present itself to me so. I think if a county court judge is trying the matter he is quite competent to deal with the facts.

10,847. In the absence of the justices having jurisdiction, what is the next best local tribunal, in your opinion—the county courts?—It is the only other local tribunal.

Mr. JOHN WRIGHT GUISE called and examined.

10,848. (*Chairman.*) You are a solicitor, and were admitted in 1880?—Yes.

10,849. Do you appear here to-day on behalf of the Gloucester and Wilts Incorporated Law Society?—I do.

10,850. Have the matters dealt with in your proof been considered by your committee?—They have.

10,851. You have been registrar of the Newnham County Court for 28 years?—Yes.

10,852. You also hold the office of clerk to the magistrates for the Newnham Petty Sessional Division, which division, as well as the county court division, embraces the greater part of the Forest of Dean?—Yes.

10,853. The importance of that is that it is populated by miners and colliers?—Yes.

10,854. And also includes a large agricultural district?—Yes.

10,855. The first question I want to ask you is whether your committee has considered the question of conferring jurisdiction on any local courts in divorce matters?—They have.

10,856. What is the conclusion they have come to?—The county court.

10,857. Is that an opinion universally held by your committee?—That is so.

10,858. You say in your proof that they are the best, most convenient, and cheapest tribunals to deal with such matters?—That is my opinion, undoubtedly. I do not think there is any question in my own mind.

10,859. You go on to refer to the judges and officials of the county court. I think we know all about that, sufficiently not to require details from you, but I should like to ask you whether you think there would be any objection on the part of the people who might resort to them being relegated to the county courts?—I do not think so.

10,860. It has been suggested that people might resent it?—I do not agree at all.

10,861. Does your experience enable you to state whether you agree or not with those who have been called before us, who pointed out the expense is at present too great for people?—I do not see why the expense should be great. I have said in a further part of my proof that in undefended cases I do not see any reason why the costs should exceed 5*l.*

10,862. In the High Court?—No. In the High Court I have put them at 25*l.*

10,863. I will come to that in a moment. I was asking whether your view, and that of those associated with you, at present is that the procedure is such that the poorer classes cannot avail themselves of it by reason of the expense?—That is so—in the High Court.

10,864. Then you refer to the grounds of the introduction of county courts, and you think they will properly deal with this jurisdiction if conferred?—I am quite sure of it.

10,865. You propose a limitation in damages and a limitation in the income of those who ought to be allowed to go there?—That is so.

10,866. Then you come to the point you were just mentioning. You have estimated the cost of a simple undefended case at present, I understand, at 25*l.*?—That is so.

10,867. Is that from personal experience?—Yes.

10,868. You have had cases in which it has been done at that rate?—Yes.

10,869. You find that is a common figure?—Yes; I have consulted with other practitioners in my county, and that is what I have found. Those figures about agree, from 25*l.* to 30*l.*

10,870. We have had it placed somewhat higher than that?—I have done it at 25*l.* I have known it done, rather, at 25*l.*

10,871. In the county court you suggest it might be done even for 5*l.*?—Yes, working out the present equity fees I work it out at 9*l.* 8*s.* 4*d.*

10,872. Have you, for example, any bill which has actually passed through your hands at 25*l.* under the present procedure?—I have not here.

10,873. The next point is, do you consider from your experience that the jurisdiction of a county court should be centralised at any particular town, or should be exercised in all the county courts?—In every county court.

10,874. What is the reason for that?—The reason is obvious—because they are in a large county. To bring people from one end of it to the county town is manifestly inconvenient. For instance, in my own county, Gloucestershire, that is bounded on the one side by the Cotswold Hills and on the other by the Forest of Dean, and to bring them to Gloucester would very greatly inconvenience them and cause very great expense. It is as bad as bringing them up to London, possibly.

10,875. You also deal with the suggestion that has been made that these cases might be dealt with at the assizes. What is the view you entertain about that?—Really the same views I have pointed out about centralisation, and, also, the judges of assize have enough to do, we find. If one has a civil case entered at the assizes now I have found it is cheaper and better to have it in London, set it down for trial in London.

10,876. That is by reason of pressure and difficulty?—Yes. There may be long cases and the judge is kept. He leaves cases and goes on to the next town. He may come back, and then the witnesses are all brought up again.

10,877. Your statement would involve that an ordinary civil action is not satisfactory at the assizes?—I do not think it is.

10,878. Those cases would have much the same thing happen to them?—That is so.

10,879. With regard to the question of separation orders, you speak partly in your capacity as magistrates' clerk and partly as county court registrar?—Yes.

10,880. What have you to say about that?—I do not like the present practice at all in front of justices. I think, if I may say so, it is much too casual. It is not gone into properly. Then, further, there is no proper machinery afterwards in carrying out and enforcing the orders, whereas in the county court there is that procedure. You have your High Bailiff Department, and everything.

10,881. How long have you been a magistrates' clerk?—I have been for five years, but before that I acted as deputy for three years. Of course, I have had much more experience.

10,882. You are registrar of a county court?—Yes.

10,883. So that you have the opportunity of seeing both systems at work?—Yes.

10,884. What are the principal objections that you state with regard to magistrates dealing with these cases?—I think in the first place it is much too local, and I also think that justices are appointed, I do not say of inferior position exactly, who are tradespeople, and who may have their customers in front of them, in fact I know they have, and the difficulty in dealing with it has increased. If I may say so, that does not add to the dignity of the court.

10,885. You would prefer to see jurisdiction even under the Separation Act dealt with by a legal tribunal?—A trained legal mind.

10,886. Are all your cases before lay magistrates?—No; one of them is a deputy chairman at quarter sessions. There are a couple of barristers who have practised at the bar, but are not practising at the present moment.

10,887. You have other ordinary men?—All classes, county gentlemen, small tradesmen, farmers; but the majority at the present moment are county gentlemen, I am happy to say.

10,888. Do you find that people come together again after these orders have been made?—Yes, to a great extent. My opinion is that they merely come into the magistrates' court through something more or less in the nature of a temporary quarrel, and they afterwards, I think almost invariably, come together and shake hands, because applications for warrants for arrears under the orders are extremely seldom applied for, proving that the parties come together.

10,889. Do you mean by that that the orders have been too readily granted?—Yes.

10,890. That there has not been a real ground?—I have known these cases adjourned. I know it is not strictly legal procedure, but on my own advice they have been adjourned for a month, and we have not heard anything more about that.

10,891. You summarise this point by saying you are confident if this procedure was in the county court, the parties appearing before a judge, with officials and advocates properly robed, would have far more weight in their minds than appearing in the more or less rough and ready atmosphere of a police court. That sums up the whole point we are on at present?—That is so.

10,892. You also say, the procedure being a civil one, in your mind that is a further argument for removal to the county court. The county court is more fitted to deal with such matters. That is dealing with the administrative part of the Act of 1895?—Yes.

10,893. Would your views be if divorce questions were to be dealt with in the country that the county courts would be the proper place?—Yes.

10,894. With regard to the publication of reports, what is the view you have to express?—I should leave that in the discretion of the judge who heard the case.

10,895. Have you considered when and how he is to exercise that discretion?—I am afraid not.

10,896. Is what is in your mind revising the proofs sent out by the reporters?—If the judge consideder the proceedings would be disastrous and dangerous, and cause immorality, I think he would be justified in suppressing them. I should leave that to him.

10,897. When do you think that would be exercised? Before the case begins he would not necessarily know, and after it is over it may be too late?—I cannot say that has occurred to me, but at the end of the case I think he could direct that the reporters should not publish it. It would then only affect the actual persons in court, who might not be very many.

10,898. With regard to the question of amendments in the existing laws, you have dealt with that chiefly in your evidence as to practice and procedure?—Yes.

10,899. You do not appear to have gone into any broader question?—No.

10,900. Is it not your wish to do so?—Yes. I thought I had more or less dealt with the points.

10,901. You have not dealt with any question of extension of divorce. You have dealt with the question of facilities, but any question of the extension of the grounds of divorce you have not dealt with. Have you not considered that?—I have considered that. I would give divorce on the ground of habitual drunkenness and penal servitude undoubtedly, over, say, a period of three years.

10,902. Have you considered the case of continued desertion for a lengthy period?—Yes, I would grant divorce for that.

10,903. Is that also the view of your committee, or are you only speaking personally?—It is the view both of myself and the committee.

10,904. As to men and women being placed on the same footing, have you considered that?—I do not agree with that at all. I think that the nature of men is different, and I consider at the present moment, with the addition of what I have stated as to drunkenness and penal servitude, I would leave the matter as it is.

10,905. (*Sir George White.*) You have been saying that the judgments of the court are far too casual; are you giving the experience of your own bench or a wider experience of benches in general in your district?—Generally; anyhow, I think that is so in many cases, because I have had more experience outside of my own court.

10,906. Do the magistrates consult you at all in coming to their decisions?—On legal points; I never interfere in questions of fact unless I am asked.

10,907. I understand you would not only give jurisdiction to the county court in cases of divorce, but remove all the separation cases to the county court?—Yes, I would.

10,908. Part of your ground is because lately you have had imported another class of justices?—That affects it in a way, because, as I have explained, you may have their customers in front of you, whereas the other class have not the local knowledge, and I do not think they are as ready to discuss these matters out of court.

10,909. You would consider that justice is best obtained by having one class to judge another?—No, I do not say that in these cases.

10,910. Why not in these cases?—For the same reason.

10,911. Because it is a question of fact?—I think they know more in the immediate neighbourhood.

10,912. How many new justices of this class have you had put on your bench? First of all, let me ask you how many justices have you altogether?—Twenty-six.

10,913. What additions have you had from this particular class?—I should say one dozen, or 15.

10,914. You say the majority of your bench is still composed of county gentlemen?—Yes, that is the majority.

10,915. You say 26?—I beg your pardon, I am wrong. Put it at 10, please.

10,916. You had no representation of this class whatever before?—Not much; no.

10,917. You draw a great distinction between the two courts, I find. You say: "I am confident that if "this procedure was in the county court, the parties "appearing before a judge, with officials and advocates "properly robed, would have far more weight in their "minds than appearing in the more or less rough and "ready atmosphere of a police court"?—I think so.

10,918. The atmosphere of the county court is very largely the same class of people?—But there is more discipline, that is, in my opinion. It is a better disciplined court, naturally: it is under a judge who has had experience at the bar, in a great many cases very large experience.

10,919. It has been represented to us again and again that local knowledge is of very great advantage in coming to a decision in these cases?—I am afraid I cannot agree; that is all.

10,920. You do not consider local knowledge to be an advantage?—I think it is dangerous at times; distinctly so.

10,921. You have to take it generally?—I know that, but I think it is better to have a judge coming in absolutely quite free from local facts and knowledge.

10,922. (*Lord Guthrie.*) From what you said about the justices, I understand your view is that while the newer class of justices may be quite as good in knowledge and ability, and quite as honest in intention, they are too much in touch with the class of people?—That is so. I am afraid I have put it rather badly.

10,923. There is no reflection on their ability or character?—Not the slightest. I see I have put it badly.

10,924. With regard to your 25*l.* as a minimum for present expense, I quite see your point. We have been told that for witnesses in a case in London a minimum would be 20*l.* I confess that astonished me very much. Could you give me any idea, in the 25*l.* case, how it would be divided between witnesses and fees to counsel and solicitors?—Of course, in an undefended case the evidence is not very great. There are not a great number of witnesses called.

10,925. Supposing you have three or four witnesses, and a place not very remote from London, 20*l.* as a minimum for witnesses must be very much in excess?—I should have thought so. I wish I had known I was going to be asked about that point.

10,926. Can you get a bill of costs and send it to the Commission?—Yes, I will do that.*

10,927. You mentioned the way in which quarrels were made up, and referred to cases where there was an adjournment for a month. That is done without a maintenance order being pronounced?—Yes, an ordinary adjournment.

10,928. Is not the result that a wife through starvation is forced to go back even when she should not?—I do not think so.

10,929. That would follow; she must live?—I think it is more or less in the nature of a quarrel, a temporary one.

10,930. A breeze?—Yes.

10,931. I understand it would be only in such a case that an adjournment would be ordered?—Yes, where the bench considered it was a breeze, then it would be adjourned with success, because they would never be heard of again.

10,932. With reference to what you said about publication, suppose your view were given effect to and divorce were to be granted for desertion, habitual drunkenness, and penal servitude, there would be a distinction; in such cases there would be no objection to publication?—Not a bit.

10,933. It would be only in adultery cases that the question would arise?—Yes.

10,934. Do you not think, looking to the difficulty of discriminating by the pleadings, that it would be better just to have a rule to limit all adultery cases to what is in the pleadings and the opinion of the judge?—Yes.

10,935. A judge could not discriminate from the pleadings, and know whether the case was to be indecent or not?—No.

10,936. You said you would leave the question of equality between men and women as it is?—Yes.

10,937. Sir John Bigham took that view also, but then he said he would add to the present exceptions two more, not merely the present five: incest, bigamy, adultery with cruelty and adultery with desertion, but he would add, first, cases where the husband was practising open and continuous adultery. Would you not add that?—I do not think I would.

10,938. Then, second, he said he would add cases where the adultery of the husband was accompanied with circumstances of gross indignity to the wife. Would you not add that, leaving it to the court to judge?—What was it he meant by "gross indignity"?

10,939. For instance, having a mistress in his own house where the wife was living?—No, I do not think I would.

10,940. (*Sir Lewis Dibdin.*) How many separation cases did you have in your particular division last year?—I am afraid I have not looked it up but I should say a dozen to fifteen.

10,941. Are those applications made, or orders made?—Applications made.

10,942. How many orders were made?—I should think in a considerable proportion orders have been made, except in those cases where I have told you there were adjournments.

10,943. Five or six, would you say?—I should say so.

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* Relative to the question Q. 10,926 in the proof of my evidence as to the production of a taxed bill of costs at 25*l.*

I have made search in my office and regret I am unable to put my hands on such a document; but that is the amount my London agent has always told me to procure in respect of an undefended case. I have consulted as well with other solicitors in this neighbourhood, who all agree with me that they have usually told their clients they could not carry the matter through for a less sum than 25*l.*

I trust this information will be of assistance to the Commission.—J. W. G.

10,944. They are not very numerous in your division?—No.

10,945. How many petty sessional divisions are there in Gloucestershire?—I should think there must be sixteen or seventeen.

10,946. I see there are 159 cases in the whole county in which orders were made during the year?—I did not know that.

10,947. I am taking the statistics of 1907. Do you anticipate any very great number of applications for divorce, supposing the law were changed as to the courts and as to the grounds? First of all, as to the courts, do you expect a very great increase in the number of cases?—I do, undoubtedly, if the fees in the county court were put on a proper basis. I consider the county court fees in equity and Admiralty are much too high at the present moment.

10,948. Assuming the procedure were put on a basis you would approve, and county courts were given jurisdiction, you think there would be a very large number of applications for divorce?—I have no doubt of it.

10,949. How does that agree with your experience in separation cases, the present separation orders? You have told me that there are really few, and I think it is your view even of those too many are granted?—Yes.

10,950. Does not that look as if there would not be a very great number of cases?—That is not adultery. My idea is that if the county court had jurisdiction and the poorer classes had the advantage of it and the expenses were not too high, there would be advantage taken of it.

10,951. You think there would be a great number of cases of adultery brought for divorce which do not now become the subject of application for separation orders on the ground either of cruelty or desertion?—Yes.

10,952. With regard to the court, I think your view is that divorce is so serious a matter that it ought to be treated in a court, shall I say, of considerable dignity?—Yes, I do.

10,953. I notice you think that the judge and the advocates being robed has a good effect?—Yes, I have not a doubt of it. I know both courts: I have had experience of both, and I have not a doubt about it.

10,954. Do you think that the county court satisfies the conditions of dignity which you desiderate?—I hope mine does. I hoped it did, and I have always more or less thought so.

10,955. Supposing it could be managed with regard to expense, you would say, I suppose, a judge of the High Court would have even more dignity than a county court, would you not?—Yes, I suppose he would.

10,956. What they call in the country a "red judge"?—Yes.

10,957. Have you at all considered the suggestion that has been made here by one of the judges, that a judge should go down from the Probate Court—I am not speaking of assizes, but a divorce judge should go down from time to time wherever it was necessary and hold fixed sittings?—Yes, I have considered it.

10,958. What do you think of that suggestion?—I like the idea of the county court judge best, with all submission.

10,959. Will you tell me why?—I have pointed that out already. I take it if it was a judge of the High Court there would be a centralising, and he would go to the county town: he would not go to the Cotswold Hills.

10,960. He would go to different centres, and those would be arranged according to the amount of work there was to be done?—I like the idea of each county court having it on its own ground, as it were, for the purpose of convenience.

10,961. You think it better that divorce should be brought to every man's door?—I do. The county court is the poor man's court. It was instituted for that purpose.

10,962. You think, do you not, that divorce is of such importance that the best court that could be devised is not too good to deal with it?—No, of course not. It is the ground of expense.

10,963. You think there ought to be the same law for the rich as for the poor?—Undoubtedly. That is my great point.

10,964. If divorce jurisdiction were given to the county courts, why should not it all be given to the county court; why keep up a court in London at all, as you propose? Why should you?—It is a question of means.

10,965. Why should the rich man have a better court than the poor man?—I do not know that it would be a better court; at least, I hope not. It is a better court, of course, in a way, because it is a superior court: but, at the same time, I think the county court judges having jurisdiction, as they have now, up to 100*l.*, that the county courts are adequate.

10,966. I thought that was your view. Why should they not do the whole thing? Why have a much more expensive court in London for the rich men?—I had not thought of it. Then you would abolish the High Courts altogether, and give the county courts jurisdiction?

10,967. I ask you that question because you say in your proof that by giving jurisdiction to county courts you would thereby leave persons of the means and position of those who now apply to the Probate, Divorce, and Admiralty Division to continue to do so. I ask you why?—On the ground of means.

10,968. Why, because they have more money, should they have a more expensive court?—Take the question of damages alone against a co-respondent. I would limit that to 100*l.*, like the 100*l.* jurisdiction in the county court.

10,969. I follow you where there are damages, but in the great majority of divorce cases I suppose there is no question of damages?—No.

10,970. You cannot carry it further than that?—I am afraid I cannot carry that further; I am sorry.

10,971. With regard to the grounds of divorce, I think you said—I am not quite sure I understood you—that you would allow divorce for penal servitude for three years?—Yes.

10,972. Is that your view?—Yes.

10,973. With every sentence of three years penal servitude you involve a potential divorce if the wife likes to claim it?—Yes.

10,974. Have you thought about that?—Yes. I first of all thought five years, but now I think that it is very unfair on a woman, especially a young woman, to leave her unprotected, as it were, when she might find a man who was ready to make a home for her and her children.

10,975. What has led you to modify your view of five years to three years?—Consideration. I at first thought five years, and thinking it over afterwards on the basis of the facts I have told you, I considered three.

10,976. I thought you might be able to tell me what were the grounds of your consideration?—Those are the grounds. There is a woman alone with a family, and she may find a man who would give her a home and look after her, instead of the union.

10,977. You really think that in every case of penal servitude for three years the wife should be allowed a divorce and be able to remarry?—Yes.

10,978. What about the children?—That is one of the points, the protection of the children.

10,979. Do you think your proposal is in the interests of the children?—Partly.

10,980. How long a desertion would you propose as a ground of divorce? You are in favour of divorce for desertion?—Yes.

10,981. How long?—I would allow a fair amount—six months, say.

10,982. Where a husband has left his wife for six months she should be entitled to a decree of divorce?—Yes.

10,983. Does it strike you that would probably lead to collusion, to arrangements being made? Perhaps you are not averse to that. Are you contemplating what they call in Scotland malicious desertion?—What is malicious desertion?

10,984. Where it is done by one side without the consent of the spouse who is deserted. Is that what you are contemplating?—Possibly.

10,985. Are you contemplating that only?—I think there might be collusion, of course, but then there might be collusion in anything.

10,986. Do you object to collusion?—Yes, I do, of course.

10,987. Suppose a man and his wife agreed that he should go away for six months and desert her, would you allow a divorce then?—No; I would not, on strict proof of collusion.

10,988. The court will not act on a thing that is not proved?—Certainly not.

10,989. You do mean what is called malicious desertion for six months should be a ground of divorce?—Yes.

10,989*a*. (*Judge Tindal Atkinson.*) You have been asked some questions about county courts and the limitation of jurisdiction. I suppose the difficulties in a case are just as great where the amount is under the limit as they might be if above?—I have always thought so.

10,990. Perhaps you may agree that it might be well to make the county courts branches of the High Court?—I have always thought so.

10,991. First of all, in reference to the county courts, you say every county court should exercise this jurisdiction because of the convenience to the parties?—Yes.

10,992. Can you tell me in your district what is the longest distance that any suitor is from his town—more than five or six miles?—In my own county court district, which is a very big one, a very scattered one—it is practically the whole of the Forest of Dean—if you take from the borders of the Wye to near Newnham it would be a matter of 12 or 13 miles, but that is exceptional in Gloucestershire, The other ones are not so scatterred or so large an area.

10,993. You have stated that the further the parties are from the centre of trial the greater the difficulty is to get there?—I think so.

10,994. It has been suggested that every county court having the jurisdiction—because it is the same judge and therefore does not make any difference in that respect—it is as well that the proceedings should be commenced in certain specified registries. Do you think it would be better and more convenient and more economical for the parties to commence their proceedings in every registry?—No; I would rather it was in the court itself. I would rather the court itself had the proceedings.

10,995. In that particular court?—Yes.

10,996. You would not specify the district registry, for instance, or the registries where they have bankruptcy proceedings?—No, I would not.

10,997. Will you explain how it would be better for the parties to be able to commence their proceedings in each registry instead of having to go to specified registries?—They would have to get up to that registry. Taking my own case, as I pointed out, the county town of Gloucester, if they had to go there for the issue of the petition or complaint, as the case might be, it would be a great deal more convenient if they were more or less at their doors.

10,998. It has been suggested that they could do that by post. Do you think that is a practical suggestion?—It might in a simple case be done by post. It might be the cause of errors and delay. Things might be filed.

10,999. Do you find that people take advantage of the post?—Yes, undoubtedly; solicitors do a great deal.

11,000. As to the question of audience, do you agree that the solicitors must have audience in divorce courts as well as the bar?—Yes, undoubtedly.

11,001. As far as the solicitor is concerned, it pays him better to employ counsel, if he can, rather than be his own advocate?—I am aware of that.

11,002. With regard to the question of publication, do I understand you to say that the judge should not be obliged to go through the reports?—No.

11,003. For the purpose of analysing how much of the report should be published and how much should be struck out, but that at the end of the case, having regard to the whole case, he should give his decision that that case is not to be reported, except the names of the parties?—That is so.

11,004. (*Mr. Brierley.*) How often does your county court sit at Newnham?—Once a month.

11,005. Are there any courts on the Gloucester circuit where the court only sits once in two months?—Yes.

11,006. If you transfer the jurisdiction of the magistrates to the county courts for separation orders, as you propose, what do you suggest the wife should do in cases where immediate relief is necessary?—I think in matters of emergency application might be made at the registrar's office, and either that the judge should arrange a special day for that particular court, or that it should be heard by one of his other courts, the nearest and most available,

11,007. Is it not your experience, I will say in almost nine cases out of ten of this kind, that there is emergency—they are matters of urgency?—Sometimes.

11,008. Are not most of these wives in an almost, if not entirely, destitute condition as soon as they have left their husbands, or as soon as their husbands have left them?—Yes; but, again, they have the overseers of the parish to give relief.

11,009. Do the overseers of the parish give outdoor relief, or do they require them to enter the workhouse?—No, I think they would give outdoor relief.

11,010. They would, in your opinion?—Yes.

11,011. You gave as one of the reasons for transferring these separation orders to the county courts that the order would be better enforced in the county court?—Yes.

11,012. Why do you say that?—Because in the police courts, in the magistrates' courts, they have not any machinery for carrying out or collecting arrears. Supposing an order is made, the woman has to carry out the order. It is not watched in any way.

11,013. Does not the plaintiff carry out the judgment in the county court? The plaintiff has to apply for a warrant of execution?—Yes.

11,014. In the county court the remedy is a warrant of execution or a judgment summons?—Yes.

11,015. In the police court the remedy is warrant for distress, or, if there are no goods, an application for a warrant or summons?—Yes.

11,016. As a matter of fact, is not the remedy rather better in the police court, namely, that in the county court in a judgment summons means must be proved, whereas on a warrant for the arrears in the police court it is not legally necessary to prove means?—That is the existing procedure.

11,017. Does it not follow that the means of enforcing the arrears is somewhat better in the police court than in the county court? It is necessary to prove means in the one case, whereas it is not legally necessary to prove means in the other?—In the making of the order in the police court the history is gone into, the question of means

11,018. I do not say it is not. You only gave as one of your reasons that the arrears could be better enforced in the county court than in the police court. I was suggesting to you that is hardly so?—I consider the county court has the best machinery for the enforcement of the orders.

11,019. (*Judge Tindal Atkinson.*) May I ask one question upon that? You know in an administration order the imprisonment goes unless the debtor proves he has not had means?—Yes.

11,020. There would be no difficulty, if your view is right, in placing these orders in the same position either as administration orders or in giving the judge a power to imprison without a proof of means?—Exactly so.

(*Chairman.*) We thank you very much for your evidence.

Mr. HARRY WRAY called and examined.

11,021. (*Chairman.*) Are you president of the Hull Incorporated Law Society?—I am.

11,022. What is the number of members of that society?—About 130.

11,023. You take an annual year of office?—That is so.

11,024. You are president this year?—This year.

11,025. I will first ask you with regard to the divorce practice of your firm. What is the name of your firm?—Laverack, Son, and Wray.

11,026. Have you had considerable experience of divorce cases and separation orders?—I think we have.

11,027. In your proof you say at present you have a dozen divorce cases in your office at the various stages?—That is so.

11,028. And further on you say you have an average of three or four separation cases per week at the local court?—That is scarcely correct. We have probably three or four cases per week about which we are consulted. Probably one-half of those will be dealt with through the local court, or through agreement or deeds of separation.

11,029. Has your experience led you to any conclusion as to the present state of things with regard to divorce jurisdiction?—Yes. I have long held the opinion that there was frequently very great hardship so far as the poorer classes are concerned with regard to divorce. They have nothing like the same opportunity of getting a divorce, and in many instances the circumstances are much more deserving than in the well-to-do classes.

11,030. You have been in practice for 25 years?—That is so.

11,031. Is that including practice both in Hull and in the local courts in Yorkshire and Lincolnshire?—That is so.

11,032. What is the remedy you propose for the difficulty you have mentioned?—I would propose that certain of the county court districts have divorce jurisdiction. I should not go so far as the last witness and give every county court jurisdiction. I think the county courts, where there is a High Court registry, would be ample to supply the need.

11,033. He was speaking for Gloucestershire and you are speaking for a part of Yorkshire?—I am speaking for Hull, which has its district registry.

11,034. But the difficulty that was suggested by him I should like to ask you about; it was the difficulty of poor people getting to a central district registry?—I do not anticipate any difficulty with regard to that. We have now very excellent train services, and some of the railway companies run motor buses into the remote country districts. I do not see why the witnesses should not get to a centre like Hull, or York, or Scarborough, which is another district registry town, getting there and back in the course of a day quite comfortably.

11,035. It depends practically upon the facility of access?—That is so. We frequently have cases at the assizes; your Lordship will know that the assizes for the north and east riding are held frequently at York, and in many instances witnesses come from the remote parts of the north riding of Yorkshire down to York, and again from the easternmost corner of Yorkshire, down as far as Spurn point, to and from York. They can get through uncontested or undefended cases at the assizes quite comfortably in the course of the day.

11,036. That is really a question of local facilities, of getting about, which may not apply in some parts?—I imagine there may be some difficulties.

11,037. You would place it, as it were, in the headquarters of the county court?—That is my view.

11,038. You say much, as I follow, as the bankruptcy jurisdiction?—I take bankruptcy as a case in point, where debtors have to travel for some distance frequently far beyond their own town, in which there may be a sitting of the county court, to another town where the public examination takes place.

11,039. There are two points on this suggestion I should like to ask you about. The first is whether you think that the people who might use those courts would resent having them instituted?—I think they would resent having their cases associated with the police court, but I do not think they would object to the county court having jurisdiction.

11,040. The other point is whether you think there is any real demand from your experience for some such facilities as you are suggesting?—I should not like to say that there is an overwhelming demand for the establishment of a poor man's divorce court, but there are many instances of very great hardship being endured, particularly by women, and owing to poverty, where I think the parties would avail themselves of the facilities if they were afforded.

11,041. Passing on for a moment to the question of separation orders, you have told us you have a number of these?—Yes.

11,042. I gather from your proof you find the percentage is lower than in the towns. What do you attribute that to?—I think that the attractions in the country are fewer than they are in the town, and that the opportunities of spending money are a good deal less in the country villages, and although I am rather afraid the proportion of immorality before marriage is somewhat larger in the country villages, yet my experience goes to show that after marriage you have practically very few cases of separation.

11,043. In the country?—Yes, and I speak from some little experience of that, first as a practitioner in a fair number of the local courts, and also because I occasionally act as assistant magistrates' clerk in another court in which I do not practise. After marriage I think the people in the country settle down much more happily and contentedly, generally speaking, than those in towns, and there are certainly fewer cases of separation.

11,044. Do you consider that the marriages are more providently made in the country than in towns?—I think that the people in the country are more contented and more disposed to settle down under the conditions which surround them than the people are in the towns. Once you get a young farm lad married to a girl in the village, the chances are against an unhappy marriage. He settles down in life, and she has fewer temptations, perhaps, less opportunities of spending money, and frequently there are much better results than in the larger towns.

11,045. You have some reference to it in your proof. What do you say as to the effect of a separation order between these people?—My own view is this. I should not grant a separation order at once. I should grant a separation order in the first instance on the lines of decrees nisi for periods of one, three, six, or twelve months, and I should avail myself of the services of the probation officers of the court, who, from my own experience, render most excellent service in many ways, particularly in regard to children, as to whether there was not a possibility of the parties being got together again. I should not grant them a separation order at once. It would be a conditional order under which the wife would be allowed her maintenance, but it would be for a fixed period, and at the end of that period there can be a report, as frequently happens in the Hull Court, where children are bound over under the new Act and placed under probation officers' charge. He reports to the magistrate the result of his experience of the person during the six or twelve months they are bound over, in the hope by probably being brought to the court again that the parties might be prevailed upon to get together again.

11,046. Do you consider if the order is permanent it is likely to produce bad results?—I am afraid it has a tendency more on the part of the man than the wife.

11,047. In your proof you refer to local courts having power to review the facts, and, if thought fit, to grant a dissolution of the marriage. Will you explain what you intend to convey there?—That is probably rather badly expressed. I was thinking more at that time of the point with which I have just dealt that the order should not be made permanent at the time of making, that they should be conditional, that the parties should be in a sense on probation.

11,048. You have a suggestion as to making the meaning of "habitual drunkard" clearer?—I think it would be a good thing. There is great confusion in the minds of a large number, I think in the minds of some of the judges and certainly of the practitioners, as to when a person does become an habitual drunkard, and if we could have a legal definition it would be of service, I think.

11,049. There is a statutory definition?—Yes.

11,050. Do you mean you would rather loosen it?—I should loosen it very considerably.

11,051. The result of what you are saying substantially comes to this: you would confer jurisdiction on the county courts in the way you have described for divorce cases?—Yes.

11,052. Would you leave the magistrates' jurisdiction much as it is, with the exception of what you have suggested about discretionary powers as to the length of the order, or would you confer that on county courts too?—I was very much impressed with the evidence of the first witness this morning, and probably the second witness too. It depends to a very large extent upon the magistrate. We are singularly fortunate in having a most painstaking magistrate.

11,053. Is he a stipendiary?—Yes. I think he has been a witness before the Commission. He is very painstaking, and many times he adjourns cases for a fortnight or a month in order that the parties might, if possible, be induced to get together again, and dealing parenthetically with regard to this question of maintenance during the month he suggests that during the period of adjournment there should be a payment per week without prejudice to the hearing, and that disposes of the temporary difficulty of maintenance which was referred to. There is a strong objection to some of the local justices having powers of divorce. There is no doubt that they do get to know, probably much against their will in many cases, some of the facts of the case, and probably at times only the facts on one side, which is much to be deplored in the administration of justice. The stipendiary magistrate, of course, is far above anything of that sort; he hears nothing of the cases until they come before him. I do not quite like the idea of vesting in benches of magistrates, constituted as they are in many instances, the power of divorce.

11,054. Does that apply also to the powers they have at present of separation, or would you prefer to see that confined to a legally trained mind?—I think I should retain that as it is. Many of the facts in connection with these separation cases are facts which men of the world are capable of dealing with. We get a fairly good sprinkling of practical men on the bench, though they have other disadvantages.

11,055. That comes to this, leaving the magistrates their jurisdiction much as it is, with the amendment you have suggested of giving an interim or not complete order till a later period?—That occurs to me as a suggestion that might have very beneficial results.

11,056. Would you convey to us or not, as between the lay magistrates and the stipendiary magistrates, if possible, that all these separation cases even should go before a legal tribunal?—I think it would be highly desirable.

11,057. The next point is the question of the publication of reports. Will you tell us what view you have formed about that?—I think the present day system of publication is most objectionable, and to my certain knowledge has had very detrimental results. It seems to me that a short condensed report, a sort of *résumé* of the case, with the names of the parties and their addresses and the tribunal before which the case was heard, and the decision, would be enough in the interests of the public. I should not even mention the witnesses' names, because many people object to go to court, and particularly to a police court or assize court, because they will not be associated with what they understand goes on at the police court and assize court.

11,058. You said it was detrimental, to your certain knowledge. What exactly is the state of facts or matters brought to you to make it your certain knowledge that the effects are bad?—Cases where evidence has been given in the court that the wife has traced the faults of her husband from a certain published case or a certain local case, facts having reached her husband's knowledge, and she attributes his downfall to practically that period.

11,059. Through reading something?—Through reading something in the paper.

11,060. The next point is the question of amendments; are those confined to amendments in the practice of procedure, or in the law?—Both. I think the procedure in the divorce court is very good. You get the petition, which sets forth the allegations against the respondent concisely, sufficiently to bring to his knowledge what it is that is to be said against him. The citation brings him before the court or not, as he chooses, and it seems to me that that is a very simple way of citing a party before the court. You serve him with his citation, the copy petition accompanies it, and he sees what is required of him, to attend the court, enter his appearance, and what it is that is charged against him. I do not think, with great respect, you can improve upon that.

11,061. What suggestion in the way of amendment are you making?—I think that I should make one addition to the grounds for divorce on the part of the wife, where the husband is treating his wife with studied contempt, ignoring her existence practically, insulting her before the servants, refusing to associate with her, will not take his meals with her, will not take her into society, and treats her in that way—I think, of course, after very careful investigation of the whole of the facts, that those together should constitute an additional ground for freeing a wife from such a husband.

11,062. Have you considered the question of crime, insanity, and desertion?—Yes. I do not think that I favour the additional ground of commitment for a term of years, penal servitude. I think that is one of the incidents of married life that I should expect a wife to put up with. It is one of the misfortunes which may overtake her in her married life, and she would have to put up with it. I should not like to say a much longer term of penal servitude than has been suggested should be made a ground for divorce.

11,063. With regard to insanity and desertion, what have you to say?—I think in hopeless insanity cases I should grant her release.

11,064. And the other?—Desertion would have to be for longer than has been suggested this morning.

11,065. I daresay?—I should think not less than two years.

11,066. The other points you mention are chiefly details as to matters of damages, and so on, that I do not know we need trouble about. There is a point about custody of the children which you mention towards the end of your proof, which I should like to ask you about. You have something to say about that?—Yes. I think under the separation orders which are now made the court usually as a matter of course gives the custody of the children to the wife. I should like the court to have a retaining influence over those children, the power, if need be, again through its probation officers, to visit those children and see that they are being brought up under proper circumstances and surroundings, even by the successful party, and that the court should have the power to take the children out of the possession of a mother who was neglecting them, under similar provisions to those provided by the Cruelty to Children Acts.

11,067. The last point you mention is placing men and women on the same footing?—Yes.

11,068. (*Judge Tindal Atkinson.*) One question about the limitation of county courts. You would limit the county court to try divorce cases to those which have a district registry?—I think it would supply the demand.

11,069. Do you know how many courts have district registries attached to them in England and Wales?—I do not know the precise number, but I should think 50 or 60, perhaps.

11,070. I think there are a larger number than that; I think nearly 90. That is over the whole of England and Wales?—Yes.

11,071. There are about 564 county courts?—Yes.

11,072. If you limit it to the district registry, do you think that would give the poor people who were not resident close by the district any facilities at all?—I think so. I have in my mind a county court which is 20 miles distant from the extreme limit of that county court area. I never hear any complaints from the suitors in the court as to having to attend the court.

11,073. I have only one district registry, at Colchester, and I have jurisdiction in Hertfordshire, and that would necessitate the parties going from Hertfordshire all the way down to Colchester, and getting from the Hertfordshire and Cambridge line on to the main Colchester line, which would be practically impossible?—There might be instances where that would have to be rather enlarged upon.

11,074. Where the judge is the same judge, if it is for the convenience of the parties, why should he not exercise it in any of the towns which would enable the parties to get to them?—There is nothing against it.

11,075. I do not know whether you have practised in the county court, have you?—Yes.

11,076. Do you find that the county courts are a popular tribunal?—Yes. There is a very different opinion in the mind of the public; they differentiate between a police court and a county court. You can get witnesses to come to a county court willingly and almost gladly to help people who need them, but they rather shrink from entering a police court. There is something about it which is objectionable to them, and they do not care to go and have it said afterwards that they had been. It may be sentiment, but the feeling exists.

11,077. It is like what a lady said to me once. She was a defendant in the county court. She did not like to be in the police court, she said. I told her it was not a police court, and she said it was next door to it?—Yes. Well, that would be the case in many instances.

11,078. (*Lord Guthrie.*) Do you propose to limit the remedy of divorce in these local centres to persons below a certain limit of income?—Yes.

11,078*a*. How much?—I should think not more than 2*l*. or 50*s*. a week.

11,079. Is it that class and downwards who are at present deprived practically of any legal remedy?—That is my experience.

11,080. So far as you know, is this the only case in England where an important legal remedy is practically denied to the poor, as far as you remember at the moment?—Yes, I should say that is so. Take the procedure and the practice under the Workmen's Compensation Act, where the poor, through the medium of the county court, get the amount to which they are entitled awarded to them practically with no expense at all.

11,081. And the tendency of recent legislation has been to open remedies to the poor more freely than they were, by increasing the jurisdiction of the county court?—That is my view.

11,082. On the other hand, is it not a fact, if your proposals are carried out, this will be the only case where jurisdiction to deal with a certain class of action is denied to people whose income is above a certain limit?—Yes, so far as place of trial is concerned.

11,083. You propose to exclude people above 2*l*. per week from the remedy of divorce in the county court?—Yes.

11,084. There is no other instance of that being done that you remember?—No. I should say to that extent the experiment would be exceptional.

11,085. Necessitated by the circumstances?—Necessitated by the circumstances, and bearing out the idea that the county court is regarded as the poor man's court.

11,086. I quite understand. What, in your case, would be the biggest cost to a witness for a return ticket from the remotest part to York or Hull, whatever it may be: roughly 1*l*.?—Oh, dear, no.

11,087. Not so much?—Hull to York would be about 6*s*.

11,088. Would 10*s*. be the biggest?—I should think it would carry you from Middlesbrough to York.

11,089. So that a 5*l*. note would cover the witnesses easily in undefended cases?—In the ordinary simple undefended cases where you have probably the wife, and one witness who may have seen the act of misconduct, which is sufficient to obtain the order, 5*l*. is quite sufficient for the witnesses. The cost is incurred, if I may say so, through our having to engage counsel and London agents.

11,090. You attach, however, importance, in such matters as divorce, to the court having professional assistance, if possible, in every case, rather than the persons being forced to appear in person?—Yes, I do.

11,091. At all the centres you refer to there is a competent local society of agents?—Yes.

11,092. Do you think that solicitors in your county could be got at these centres to appoint a certain number of their younger members, year by year, to represent the poor gratuitously in these cases?—I should think that could be adopted.

11,093. Do you know that is our system in Scotland all through, that the local solicitors appoint a certain number annually of their younger members to represent the poor?—I was not aware of that.

11,094. We find no difficulty—they are the younger men with little to do, of course?—They get the experience.

11,095. Do you think there would be any difficulty in England?—I should not think so.

11,096. That would be very important, to ensure that in every case there were persons responsible to the court to appear for the parties?—Yes; it would have all that advantage.

11,097. And especially in questions of collusion it would be a safeguard to the court that persons who were responsible to the court conducted the cases?—Yes. Dealing with the Workmen's Compensation Act as administered in Hull, where we have a very large number of cases, as you can readily imagine, about one month sees the beginning and the end of the case. A woman who has the misfortune to lose her husband, a month later may have received her award from the county court judge, and probably a payment on account out of the amount paid into court.

11,098. In the case you mentioned of desertion long continued and persisted in, wilful desertion, have you this knowledge, that a husband who has disappeared to the colonies, for instance, concealing his address, sending no maintenance to his wife and children, leaving them to starve, generally has taken up with another woman? Do you think it is a fair presumption?—I have no case present in my own mind of the kind at the moment, but I quite accept that view of the matter.

11,099. In regard to hopeless insanity, is it your view that may reasonably be taken as equivalent to death?—I think it is almost worse than death for the wife.

11,100. (*Sir George White.*) I gather that on the whole, whilst you are prepared to give jurisdiction in divorce cases to the county court, you are still in favour of keeping the ordinary separation orders cases to ordinary magistrates?—Yes, I think I should, because, in many instances, separation orders are disposed of in ten minutes; there may be no appearance on the part of the husband; the facts are perfectly clear, and probably the police court is as quick and expeditious a way of dealing with it as the county court.

11,101. I gather, too, that in some cases where separation orders are given you think a divorce would be preferable. You say, in your proof, that you think a separation order is a frequent obstacle to the parties availing themselves of an offer of marriage?—Yes.

11,102. And if the county court was available, those cases would go to the county court for divorce rather than to the court of summary jurisdiction for separation?—Yes.

11,103. You do not think that there is an overwhelming demand for divorce amongst these poorer people?—I do not allege that for a moment. There is no great outcry that I know of, but at the same time there are a large number of people suffering from the fact that they cannot get relief from a husband from whom they should have relief. They have not the means to do it.

11,104. Do you think in many cases they do not make the demand because they are already aware that the cost is prohibitive?—I do.

11,105. Therefore their cases do not come so prominently before the court, or any one else, as they would if this was not a known obstacle?—That is my experience.

11,106. You suggest, I think, that in your experience the poorer people in the country are more faithful to the marriage tie than in towns?—To the marriage tie I do think so.

11,107. You give as a reason that there is less opportunity of spending money. Would you think another reason is that there is sure to be more publicity in the narrow circle in which they are than in towns?—No, I should not assign that as a reason. I think, on the whole, the country people after marriage settle down and are inclined to be more faithful to each other than people in a similar station of life in town.

11,108. I understand you are against allowing divorce in any case of penal servitude, whatever the nature of the crime?—I should differentiate, probably. I could imagine one or two gross cases where I would release the wife. But take a sentence of penal servitude for embezzlement.

11,109. You would give jurisdiction?—No; I should discriminate between the offences.

11,110. (*Sir Lewis Dibdin.*) Do you mean you would allow penal servitude for embezzlement, or would you not?—I would not. Take a bank clerk, who may have a large family; his salary is small; it is a case extending over a long time, and he gets a sentence of penal servitude. I should not let the wife divorce him. But if it was a case of a gross act, such as one can imagine, some of the grosser offences, offences against nature, and different things of that sort, then I should.

11,111. (*Sir George White.*) That is what I want to get at?—I think I said at first I was against it, but I would alter that. I can imagine cases where I would grant divorce.

11,112. I want to ask you a question because of something in your evidence and in the evidence of a previous witness. You rather implied that local justices are not absolutely the best tribunal to deal with these cases, because they get to know the facts of the case. Is it in your experience a matter of practice to any extent whatever that local justices in their private capacity listen to statements made by people who are coming under their jurisdiction afterwards?—It is my experience that at times they have to listen, that they are not willing parties to it, and they object to it, but they cannot help themselves; they get to know. I remember on one occasion a magistrate asking a question which did not arise out of evidence at all, but which could only have been asked owing to some private knowledge of the case of his own.

11,113. I can imagine a case of that kind. I wanted to get at whether you considered it was in any sense a practice for magistrates to allow people who were coming before them to come to them in their private capacity and make statements?—I should not like to suggest that against the magistrates. I think they very strongly object to it, but they cannot help themselves; they are in a small country village, probably, or a small town, and the parties go to them and tell their story, or as much of it as the magistrate is disposed to listen to, and they get some information other than that which is disclosed in the court.

11,114. Unwittingly, really?—Of course, I do not suggest they go in search of it.

11,115. I should have supposed the practice was they would say at once, "This case coming before me, "I cannot hear anything you have to say"?—They probably say so, but they have probably heard a good deal before they make up their mind to say so.

11,116. (*Mr. Spender.*) May I just try to get clearer the course of events you contemplate for the county court with regard to separation orders and divorce jurisdiction. I think you said you would give the police magistrate an option to make separations for one month, or two or three months, temporarily?—Yes.

11,117. And then after a certain period, if those separations continued, you would let the parties go from there to the county court?—No. I am sorry if you understood that.

11,118. That was the point I wanted to make clear?—My object is, if possible, this. Great efforts are made by our own magistrates, and in many instances by the advocates in our office. We meet at our rooms at the Law Courts with a view to keeping these people together if it can possibly be managed. Where we can tell it is a case of a breeze, as has been suggested, or the first quarrel, and the wife rushes into court for a summons, the solicitors on both sides are frequently complimented by his Worship upon having made efforts to prevent the thing coming into court. You may find it hopeless, and it may be adjourned for a fortnight or a month for the parties to reconsider things. If at the end of the month it is hopeless, then the magistrate makes his separation order. I would make those orders limited as regards time, and at the end of one month, or two months, or three months, or six months, or twelve months, whatever it might be—the shorter the time the better, perhaps—the parties should appear before the court again, and a renewed effort is made to get them together.

11,119. I follow that?—Probably the ground having been prepared by the probation officer in the interval the separation is running.

11,120. You say you would give the local court power to review the original facts; what do you mean by the local court?—The magistrates.

11,121. You go on to say: "together with any "additional evidence that might be brought forward, "and, if thought fit, to grant a dissolution of the "marriage——"

(*Chairman.*) That is what the witness said he wished to correct.

(*Mr. Spender.*) I thought it was lower down.

(*Chairman.*) That is the point on which he said he wished to vary the proof.

(*The Witness.*) I should not give the magistrates power to dissolve the marriage at all.

11,122. (*Mr. Spender.*) You would cut off the people who had been to the police court for a separation order, and got one, from going afterwards?—No, let them go to the county court for the divorce if they had the necessary proof.

11,123. This review of the facts would be taken by the county court?—Yes.

11,124. On the question of publication of reports you seem to contemplate the appointment of an official reporter of the court?—An official reporter of the court. We have official reporters of the court now.

11,125. You say it would be sufficient if a condensed *résumé* of the case were issued to the press without disclosing the names of witnesses. That seems to contemplate the exclusion of reporters from the court, and the supplying of an official report to the press?—Since the Criminal Appeal Act, you have at quarter sessions and at assizes an official reporter: you might adopt that principle in your police courts. There are half a dozen reporters; you might have one for one month and another for another, and a longer period if you like, who would prepare a short *résumé* of the case and submit it to the clerk to the magistrates, if you like.

11,126. You would admit the public to the court as well?—Yes. What I object to is the publication of three columns of a wretched divorce case with all its unsavory details, and you cannot get three lines or three sentences about the Congo atrocities. That is what I want to convey to you. They will read three columns of divorce proceedings, but you cannot get them interested in such questions.

11,127. That is the fault of the public?—Not altogether.

11,128. Do you follow that one consequence of this proposal would be—I do not say it is fatal to it—that an official report would prevent any report till the next day? The evening papers would be shut out from reporting a case of public interest?—Would it matter if we have to wait till the next day to read that John Jones has been divorced?

11,129. May I take it a step further. Would you reserve these reports till the trial was over?—Yes, I should.

11,130. Till it was entirely over?—Yes, and then issue to the public the official report of the case. The courts are open to those of the public who like to attend and hear for themselves what is going on.

(*Chairman.*) We thank you very much for your evidence.

Mr. JOHN HERBERT PAYNE called and examined.

11,131. (*Chairman.*) You also come from Hull, and you are a member of the Incorporated Law Society. I think your name, in addition to Mr. Wray, was sent up by the secretary of your association?—That is so.

11,132. You are a solicitor, and senior partner in the firm of Payne and Payne, practising at Hanover House, Hull?—Yes.

11,133. For the past 12 years you have had a large experience as an advocate in police courts, more especially during the past 10 years at the Hull City Police Court?—Yes.

11,134. Have you during that period been frequently advising the poor and lower middle classes in matters relating to divorce and matrimonial causes?—Almost daily.

11,135. First of all with regard to the question of conferring jurisdiction on local courts, will you tell us what you have to say about that?—So far as my experience goes I do not think there is a great demand for increased facilities for divorce amongst the lower classes. There are a number of hard cases, but in my opinion the remedy would be worse than the disease.

11,136. The remedy of divorce?—Yes.

11,137. Will you tell us why?—One is consulted every week by young people who have married in haste and are anxious on the very slightest grounds to have the marriage annulled. Of course the decent working classes, except in very occasional cases, do not require divorce, but I am afraid if facilities are granted to local courts a number of these lower class people would on very slight grounds go to the county court, say, and ask for a divorce.

11,138. Would you assume that the county court would give it on slight grounds?—What would there be to prevent a man and a woman who had married in haste arranging to commit adultery?

11,139. That is what you fear?—That is what I should fear. Even now the King's Proctor intervenes, but I do not know that in all cases he succeeds in obtaining the information he requires; but if you give divorce jurisdiction to the county court there would be, I am afraid, a considerable amount of collusion which it would be impossible to detect.

11,140. How would you deal with these cases in which we have heard there may be considerable hardship, where there are real grounds of divorce?—I have suggested in the last paragraph in my proof, that it seems to me the principle of some recent legislation is not only to assign a solicitor and counsel to a poor person who is unable to pay, but to pay for such assistance; I mean the Poor Prisoners Defence Act and the Criminal Appeal Act.

11,141. Is your point that if there were an extension or assistance given, it should be done by means of money provided rather than a local court?—Yes, that is my suggestion. I think provision should be made where a poor person proves that he or she is not worth, say, 50*l.*, after payment of all just debts, &c. To such a person, on laying a case before counsel, or if it is thought advisable an official who might be appointed for the purpose, setting out the grounds of action, together with a copy of the evidence proposed to be called in support thereof, if leave to proceed were given, a solicitor should be assigned with permission to employ counsel, and both solicitor and counsel should be paid a reasonable sum—a small sum, I should put in—for their costs and fees in the matter. Such fees and costs to be taxed by an officer of the court, and the allowance made not to exceed a maximum sum.

11,142. Paid by whom—out of the rates, do you mean?—Out of the rates.

11,143. Or the national funds?—I had not thought about that. I should not care, either one or the other.

11,144. At the public expense?—Yes. I might add, if you would allow me, I think that there would be much less risk of collusion if the system I have suggested were adopted rather than cases tried in the county court. People are very careful about coming to London, and are more careful about what they say here than they would be in the county court.

11,145. That sums up generally your objection and your suggestion. If you were to confer jurisdiction on the local court I should like to ask whether there would be any reason you suggest for preferring the magistrates' court to the county court, or the county court to the magistrates' court?—On the whole, I think the county court would be the better tribunal.

11,146. You say in your proof you get a trained lawyer where justices would not necessarily have that training?—That is so.

11,147. What is your view about confining that county court jurisdiction to a centre as distinguished from the various courts about a county? I do not know whether you have gone into that?—I think it would be much better to limit the jurisdiction in divorce, if it is extended to the county court, to those places where there is a district registry of the High Court. Of course, in our district, as Mr. Wray has pointed out, the distance from any given point to a district registry is certainly not more than 12 or 13 miles at the most. Hull and York were mentioned, but York is a district registry, and so is Hull, and there are district registries between Hull and York.

11,148. You are speaking of district registries of the High Court?—District registries of the High Court.

11,149. You proceed, also, as regards the relative position of county courts and police courts, to point out that in the county courts the officials are familiar with the proceedings, such as pleadings, and so forth, and in the police court that is not so?—Yes.

11,150. You conclude on this point by saying that from the administrative point of view it seems clear that the county court would be much better able to perform the work consequent upon the new jurisdiction in divorce, &c. than the police court?—I think so.

11,151. Unless it was presided over by a stipendiary magistrate, as you proceed to say further on?—Yes. If the jurisdiction is extended, and if it were possible to confer jurisdiction on the police court presided over by a stipendiary magistrate, I should like to see it done.

11,152. You have already dealt with the district registries of the High Court. The next paragraph of your proof, I think, deals with details as to procedure, which I do not think we need trouble about for the moment. With regard to the question of separation orders, you have been good enough to look through the figures, and are prepared to give the figures in Hull?—That is so.

11,153. You have a population of 300,000?—Close on that figure.

11,154. The clerk to the city justices supplied you with these figures. During the past three years 223 separation orders have been made, and 386 summonses granted?—Yes.

11,155. You think the difference between the number of summonses and orders is due to reconciliation between the parties?—That is so. In a great number of these cases, where one is consulted by the

husband or wife, the summonses are never applied for at all. We are all members of one society, and in cases of this sort we endeavour to do our best to get these young people together, and in a great number of cases we succeed.

11,156. If that is not so, sometimes the summons is successful and produces reconciliation?—That is so.

11,157. I gather even after the order is made you find cases of reconciliation?—Yes, very frequently.

11,158. Do you find also after the order is made a certain number remain permanently apart?—A certain number remain permanently apart, but I should say in nearly 75 per cent. of the cases the parties come together again after the order.

11,159. Can you tell us that from figures?—This is a table showing the number of summonses granted during the past three years, and the number of orders made.

Summons granted.

Year.	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkard.	Aggravated Assault.	Total.
1907	70	44	16	3	—	133
1908	68	40	24	1	—	133
1909	75	31	13	1	—	120
	213	115	53	5	—	386

Orders made.

Year.	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkard.	Aggravated Assault.	Total.
1907	34	21	10	—	5	70
1908	42	27	12	—	1	82
1909	37	12	8	11	3	71
	113	60	30	11	9	223

11,160. What is the number of orders made out of that total of 223 which are only for maintenance, as distinguished from maintenance and separation?—I could not say that. Since the case to which your Lordship referred a short time ago has been decided, the stipendiary magistrate generally asks the solicitor for the wife, if he has decided to make an order: "Do "you wish a separation order made, or simply an order "for payment of maintenance?" In a great number of cases an order merely for the payment of maintenance is made.

11,161. You approve of that practice?—I do.

11,162. Will you tell us why, because I think it was the gentleman from Sunderland who said he did not approve of it, or indicated that?—I approve of that, because if a woman, say she has brought her husband there for persistent cruelty or desertion, simply gets a separation order, she is debarred from taking proceedings in the Divorce Court hereafter.

11,163. And so it is better to leave it simply maintenance?—Leave it open; I think it is much better.

11,164. Do you find, as a fact, the people themselves make any difference in their action according to whether it is maintenance or separation?—I do not.

11,165. They treat it as if it was an order between them?—That is so.

11,166. Upon the whole you think the present system of granting these orders is working fairly well, although you cannot regard the Act of 1895 as an unmixed blessing?—That is so.

11,167. What are the mixtures in it which lead to it not being satisfactory to some extent?—For one reason, the amount of maintenance money granted to the wife for the support of herself and children is generally so small that she is unable to keep herself and children properly. On the other hand, the amount the husband has to pay is so much out of his wages, and what is left is very often insufficient to properly keep him.

11,168. Is that one of the reasons why, as we have heard, the economic pressure comes into play, bringing them back again?—I think that is so. I think that is a very strong factor. I have given the case of a man earning 24*s.* a week with a wife and four children. In such a case the usual rule in the City of Hull would be to give the wife one third of the husband's income, plus 1*s.* a week for each child. That would mean the woman would have for the support of herself and four children 12*s.* a week, and the husband would have the remaining 12*s.* Neither the husband nor the wife would be able to live.

11,169. What remedy do you suggest?—I do not know I could suggest a remedy. I think in practice it works out rather well, and it brings the parties together again.

11,170. You go on to say that your experience of county police courts is that the justices do not give a wife such a large proportion of the husband's income. Is that as distinguished from what you have stated?—Yes. I have known a number of cases where a wife with a number of children has obtained an order against the husband, and the amount of the maintenance money has sometimes been only 4*s.* to 6*s.* a week.

11,171. That is the county as distinguished from the borough?—Yes.

11,172. You make a comment upon the possible effects of that state of things. Will you tell us what you intend to convey?—I have known several cases where women have deliberately gone to live with men because they have been unable to keep themselves and their children on the amount of moneys which have been granted to them by the justices.

11,173. That leads me to ask you again what remedy is present to your mind or view to meet that state of things?—I think that the wife should have at least one third of the husband's income, and that certainly does not apply in many of the country courts.

11,174. What are the grounds upon which they cut it down?—I do not know; but I have been amazed in several cases at the very small amount given to the wife by the justices.

11,175. Out of the man's income?—Yes, having regard to his earnings; and I rather think one reason which has operated in the minds of the justices has been that if they give the woman a very small amount she may go back to her husband.

11,176. Do you regard that as a legitimate exercise of the powers under the Act?—I do not think so. I find that some justices in the country are inclined to look rather lightly at cruelty committed by a man to his wife.

11,177. Does that lead you to think that this jurisdiction should not be exercised except by trained lawyers?—I am very strongly of that opinion.

11,178. Let us see how you suggest that should be worked out. In the city, where there is a stipendiary magistrate it is not so difficult, but in country places what is your proposal then?—On the whole, I rather think the county court would be a better court to try all cases of dispute between husband and wife, rather than the police court.

11,179. Even including all these separation orders?—Even including these separation orders.

11,180. Therefore, having a legal mind rather than the ordinary bench of lay magistrates. That is the reason for what you are suggesting?—Yes.

11,181. Then there is another point. You say all payments should be made through the court. You think that would be an advantage?—I think it would be a very great advantage.

11,182. Then also, if the husband falls into arrear for a certain period, he should be committed without an application for the purpose?—That is so.

11,183. That would be brought to the court's attention by the officer to whom it should be paid?—Yes.

11,184. And there and then a committal order made?—That is so.

11,185. It puts the wife at present to too great expense to enforce the arrears?—That is so. The wife has to apply for a warrant, and when the man is arrested she has to turn up and give evidence against him. Before she can get a warrant she has to pay 5*s.* 6*d.* for it.

11,186. The next point seems to deal with what you have already said, because you say that greater care needs to be exercised by the justices in the granting of separation orders, especially to young married people, and such orders, if granted, should provide for payment of a reasonable sum for the maintenance of the wife and children. That is in substance what we have been dealing with?—Yes.

11,187. You suggest that, instead of granting separation orders in these cases of limited income, it would be a benefit if the wife were ordered to return, and the husband and wife placed under supervision. Is that a practical matter? Could that practically be done?—I think so. If, as I suggest, the husband and wife were placed under the care of the probation officers, who are persons of considerable experience and general tact as well, I think the results would be very beneficial. The last witness suggested that separation orders should not be granted at once, and I agree with him. As the result of my experience I find that, with a little care and the exercise of tact, a very great number of these young people who say they want to be separated can be brought together, and I may tell you, I think, without the slightest exaggeration that, during last year, I and the last witness brought at least 30 young couples together by means of talking to them.

11,188. There would be power in the magistrates to order them to live together under supervision?—Yes.

11,189. In proper cases?—Yes.

11,190. The last point I think I need trouble you upon is the question about the publication of reports. What have you say about that?—I think the publication of full reports of some cases, setting out details as they do, must exercise a corrupting influence on the minds of especially young people, and I think, on the whole, if reports were given, short reports merely containing the names of the guilty parties, justice would be met in the interests of the public. I do not think it is a good thing to pander to public taste by inserting in the papers long details of acts of adultery which have taken place, and if all the newspapers agreed, one would not get any benefit against the other.

11,191. You summarise the leading points mentioned in your proof. Just see if that is your view. "It will be seen that, in my opinion, it is not advisable, "in the interests of the public, to extend the facilities "for divorce amongst the poorer classes by conferring "jurisdiction on local courts under which divorces "could be obtained at small expense. At the same "time it seems anomalous that the Divorce Court is "open to the rich suitor, while the poor person is "denied a remedy owing to the expense of proceedings." That is your view?—That is so.

11,192. And the way to meet it is by finding the money to provide it in London?—That is so.

11,193. (*Mr. Brierley.*) Did I understand you to suggest that there should be a statutory provision that the justices should grant at least one third of the husband's income to the wife?—I did not suggest that there should be a statutory rule of that sort, but I am not sure that it would not be advisable.

11,194. Otherwise the justices have discretion now as to what amount they will order the husband to pay?—That is so.

11,195. I think you rather suggested that there should be some statutory provision?—On consideration I do suggest it. Of course, there is a case in the Divorce Court which is referred to in "Stone."

11,196. In which the judges pointed out the practice in the Divorce Court?—Yes; it is followed in cities, but is not followed in the country.

(*Chairman.*) That practice is based upon incomes considerably larger than what we are dealing with, where a third may be adequate for people to live upon. I do not think that rule could be laid down as a hard-and-fast rule in any way.

11,197. (*Mr. Brierley.*) I do not think it is so held to be. You say your experience is that in cases of cruelty the justices do grant rather a small proportion?—That is so—lay justices.

11,198. You said they viewed cruelty lightly; do you mean they refuse the separation altogether, even in cases where there is some substantial evidence of cruelty, or do you mean they grant the separation but refuse to grant substantial maintenance?—I mean that the cruelty has very often to be rather gross, and that when an order is made the maintenance moneys are small, I have found.

11,199. It seems to me your evidence about that is rather different from that of a good many witnesses, who have told us these separation orders are granted on somewhat trivial evidence of cruelty?—I have not found that so in my experience. I have found it is much more serious to commit an offence like poaching than it is to knock a woman's head nearly off. That is in the local courts.

11,200. (*Chairman.*) That is not the bench in the cities?—No.

11,201. (*Judge Tindal Atkinson.*) You think a scheme could be proposed and carried into effect by which the State should pay the costs of these poor people to come up to the London courts?—That is so.

11,202. A divorce is a private matter between the two parties. It is not like the administration of the criminal law?—That is so.

11,203. Do you think it would be possible to get the Treasury to consent to give public funds to bring people from different parts of England to London when there exist 567 county court towns in the kingdom which they could resort to? Do you think it would be likely?—I am sure I do not know what the Treasury would do.

11,204. You would think there would be a difficulty with the Treasury?—I should anticipate there would be a difficulty with the Treasury if they were asked to supply any money, but I think in the interests of the community it would be better that these cases should be tried only in London.

11,205. Why should not the Treasury pay the cost of all divorce proceedings on the same footing?—You ask me that question; might not I ask why should not the Treasury pay the cost of all prisoners being defended?

11,206. Well, why not?—The county pays for poor prisoners being defended, but they do not pay for rich men.

11,207. That is a matter of much greater public interest than the question of divorce?——

(*Lord Guthrie.*) Why?

(*Witness.*) I do not think so.

11,208. (*Judge Tindal Atkinson.*) You say that there is a difficulty in detecting collusion in a local court?—Yes.

11,209. How do you suppose any judge in an undefended case can judge of collusion when he has the witnesses before him?—He cannot, but inquiries are made by the King's Proctor, and in the case of persons in a better position in life it is more easy to find out whether they conducted themselves in an unusual way than it would be in the case of poor people living in terraces in the poor parts of a city.

11,210. Those are inquiries which are made after the case is determined?—After the decree nisi is granted, but before the decree absolute.

11,211. Is there not some machinery in the county court by its bailiffs and registrars for making the necessary inquiries in the locality, where the bailiff probably knows everybody and everything about them? Those bailiffs could make the inquiries and ascertain the necessary facts?—I do not think so.

11,212. Why not?—Because what would be an act of gross impropriety and would lead to great suspicion in the case of a person in a good position in life would be a mere nothing with regard to these poor people living in terraces, and it would be a most difficult matter, if a young couple arranged that one or other should commit adultery for the purpose of getting a

divorce, for the county court bailiff or anybody else to suggest or prove that adultery had been committed.

11,213. That would be equally so if that particular case were tried in the High Court?—That is so.

11,214. Then it makes no difference whether the case is tried in the county court or in the High Court?—I agree.

11,215. In reference to the separation orders and the bringing of the parties together, may it not be that it is not always advisable to do so upon simply economic grounds? The wife is compelled perhaps to come back to a brutal husband?—That is so.

11,216. And live the life of a toad under a harrow simply because she is compelled to live with him to get means?—That is so.

11,217. Is it not better that they should be divorced?—Yes, in a case of that sort I should say it might be, but you cannot grant divorce to relieve one person without granting it to every person, and I think, on the whole, that the remedy would be worse than the disease, to put it shortly. There are cases, undoubtedly, where poor persons ought to have divorce, cases of considerable hardship, but you cannot grant those persons relief without opening the door to all these improvident careless persons to whom I have referred.

11,218. You say separation orders operate well because of the reconciliation of the parties, and they come together?—That is one factor.

11,219. It is a very considerable factor?—Yes, but I should say that far more matters are arranged before a separation order is granted than after.

11,220. After the summons, you mean?—Yes.

11,221. I daresay that is true. I cannot understand, and I want to understand if I can, because I have to form an opinion, why you say that it is better that the divorce proceeding, if they go to the county court, should be tried in the district registry. I will give you an illustration. If it applied to my circuit I should only sit at Colchester. People coming there would have to come from remote parts of Tottenham, Edmonton, parts of Hertfordshire, Barking, travelling all the way down to Colchester, and bear the expense. When I go into other districts and sit myself, and I am the same man, what is the advantage of my sitting at Colchester to take the cases from those remote districts?—I am very much surprised to hear that you have only one district registry in your county court district, and if that were the case generally—I do not think it is—I should modify my opinion.

11,222. Supposing there are two or three; what is the object of the parties following the judge to his particular town when he comes to their own towns and can hear them there?—For one reason, I think in the district registries the registrars have much more practice; they are acquainted with questions of pleading and practice which arise better than the registrars in little places where they may only have two or three cases each year, cases of very trifling importance, and I assume that if divorce jurisdiction was granted to the county court, matters of considerable moment would have to be decided by the registrars.

11,223. Subject to an appeal to the judge?—Subject to an appeal to the judge.

11,224. But even if your view were carried out, why should not the judge try them at all his courts, even although the proceedings were taken in a particular registry?—For the convenience of the parties I do not see why they should not be tried in a particular court, as long as the process is only issued at the district registry court, because you can try cases now, as you know, by arrangement.

11,225. Would you extend it to bankruptcy registries, because the registrar has very important jurisdiction in bankruptcy?—I would, decidedly.

11,226. (*Sir Lewis Dibdin.*) I think you are not in favour of bringing divorce to every man's door?—I am not.

11,227. Your objection is not based on any imperfections of the county court for its present purposes, but on the general undesirability of so increasing facilities for divorce as to make it a very common thing?—That is my reason. I think the county court at the present time is a very satisfactory tribunal for the poor; but I think in the interests of the community it is undesirable, as you put it, to bring divorce to every man's door.

11,228. I daresay you did tell us, but I omitted to notice it, how far your proof voices the views of your society?—You have heard my president, who gave evidence before me, Mr. Wray. I do not know what the individual members of the Hull Law Society think, but I can say—with the exception of my friend, Mr. Wray; he and I slightly differ on this matter—the advocates I have spoken to in Hull who have had experience of these matters in the police court, agree with me, and I believe the stipendiary magistrate and the chief constable do.

11,229. There is just a very trifling matter arising out of my friend, Judge Tindal Atkinson's examination. He put to you in a feeling way the single district registry which there is in his great district. I daresay you are aware—I do not think he put it to you—that his district is comparatively near to a town of some importance called London?—I see.

11,230. I think that may probably affect the matter?—Yes, I think it would.

11,231. (*Lord Guthrie.*) On the whole, do you think that divorce in England has done more harm than good?—I do not go back to 1857; but from what I have seen since I have been in practice, I should say that on the whole it has done more harm than good.

11,232. You would repeal the Act of 1857 if you had the chance—it comes to that?—Yes, I think I should.

11,233. You say that that is the opinion of the majority of the Law Society of Hull?—I would not say that. I am not speaking for the Law Society; I am simply saying I have spoken to the men who practise, the advocates at the Hull Police Court and County Court, four or five of the leading men there, and I did not put that point to them.

11,234. That is what I mean?—I did not put that point to them. I simply asked them whether they would extend it to the county courts.

11,235. Assuming that Act was right, you have no doubt it was intended that the remedy in the Act should be available for all classes?—That is so.

11,236. Equally you have no doubt that in point of fact it has proved not available for the poor?—That is quite true; it is not available.

11,237. In regard to what you have suggested as to payment for solicitor and counsel in the case of poor persons under a certain wage, so far as you remember, is there any other case in England where, in order to obtain a civil remedy the Crown pays the parties costs, or any part of them?—No, I do not know of any case.

11,238. I think not. In the case you referred to of the Poor Prisoners' Defence Act, 1903, does the Crown only pay where the Crown is the prosecutor?—That is so.

11,239. (*Sir George White.*) I think you said you were daily consulted about these cases. Were you referring especially to those who wanted divorce, or to matters of separation that come before you?—I was referring to matrimonial differences between husband and wife.

11,240. Of all classes?—Which embraces divorce, separation, and cruelty, of course.

11,241. You are not inclined, although you admit there are many hard cases amongst the poor, to place facilities in their way to get rid of their hard position lest it should be abused by a too greater readiness to give divorces in other cases?—That is so, and because of the effect it would have, not on the decent working people, who only need a remedy in a small number of cases, but because of the effect it would have on the poorer classes who are improvident, drunken, and so on.

11,242. Cannot you trust the existing courts not to make this thing easy, and give divorce in cases which are not justified?—I do not see how the existing court could find out. These people who want separations, having married in haste, would arrange, I am afraid, to commit

adultery, and the county court would not be able to ascertain whether they had or not.

11,243. Still you get back to my original position, but you are not prepared to give justice where it is required lest it should be abused?—I am prepared to give justice. My suggestion is that all parties should be treated alike, both the rich and the poor, but I do not propose to bring divorce to the poor man's door. I propose to bring the poor man to London, and either let the Treasury or somebody else pay for him getting that relief which the rich man has at present.

11,244. Do you consider that a practical remedy?—I think so. I do not think there would be a great number of cases. If you open the county courts I think people would rush there, but they would hesitate about coming to London.

11,245. But why "rush"?—These improvident persons, these dissolute poor, would go to the county court for a divorce, I believe, in numbers, but they would not come to London.

11,246. In that case they would have to prove adultery?—Yes, but they could easily prove it if they arranged to commit it, as I am afraid they would.

11,247. We are not dealing with the very lowest and improvident section?—That is so, but you cannot deal with these decent working people who have relief without dealing with the persons to whom I refer.

11,248. That is just my point. Would you not give these decent working people relief lest others who do not deserve it would get it?—Not relief in the county court.

11,249. To come back to the impracticability of your remedy, if I may suggest it, that is to say that the Treasury certainly would not find in a case of this sort the extra money needed to bring people to London when they could get provision much nearer home and at less expense, therefore if that be so your remedy is no remedy at all?—But still, as a matter of fact, remedies are denied to the poor. Even to-day there was a question asked of the last witness, if I might refer to it, as to whether in any cases there was a remedy denied to the poor. May I give a striking illustration?

11,250. I do not think it is necessary. Other classes get justice sometimes where poor people cannot get it. We are considering the possibility of meeting cases so far as divorce is concerned?—That is so.

11,251. It appears to me that your remedy is no remedy, and therefore you perpetuate what you admit to be an injustice to a certain section of the poorer classes?—But a remedy could be given. I do not see any reason why these persons should not be brought to London. If the Treasury will not do it, why not let it be done at the expense of the rates of the district where they live? The Treasury does not pay the cost of a poor prisoner; it is paid out of the rates.

11,252. You believe it would be compatible with the ideas of people to pay these extra expenses that would be incurred by coming to London out of public funds, and that they would be willingly paid out of public funds, either local or imperial?—Yes.

11,253. Unless you accept that position, your remedy is no remedy?—I accept it. I think it is much better than taking divorce to the door of these people.

11,254. There is one rather remarkable sentence in your proof which I think is contrary to the evidence we have generally had. You say, "At the present "time amongst many of the poorer classes, both men "and women, perhaps more women than men, utterly "fail to recognise anything of a binding nature about "marriage." Is that a matter of opinion or experience, —"more women than men"?—I should perhaps have said there, more young women than men.

11,255. However, if it is modified in that form, it alters it?—I should say newly-married young women. That is what I meant. You will notice in the following sentence in my proof I give an illustration of young married persons who have in some instances been only married a few months, and the wife on very slight grounds wishes to obtain a separation order.

11,256. I am coming to that in a moment. You give as an instance that a young couple have had a quarrel; heated words ensued, and have perhaps resulted in the husband slapping his wife's face. Is that a ground for separation in the courts with which you are familiar?—It is not, but it is a ground for the wife running off to the solicitor, accompanied by her mother, or to the police court, to ask if she cannot get a separation.

11,257. She does not get it?—She does not get it.

11,258. It is a matter of no consequence?—It is a matter of some consequence as an illustration of what I am trying to point out, that the marriage tie is regarded very lightly by these people.

11,259. Then in regard to the question of maintenance you draw a strong distinction between the sums allowed in the country and in the town?—Yes.

11,260. Are you quite sure that is not based upon the comparatively reduced earnings in the country?—No, I think not.

11,261. You speak of about 4*s*. to 6*s*.?—I do not say that generally. I gave that as an illustration. I do say from what I have seen of the practice in the country that the justices do not generally grant one third of the man's earnings plus 1*s*. for each child, as our stipendiary magistrate does in the city.

11,262. Would not this low figure of 4*s*. to 6*s*. in a very great number of cases be one third of the man's earnings in a country district?—No, not plus 1*s*. each for the children.

11,263. What are the average earnings of an agricultural labourer in Lincolnshire?—I should say 18*s*. to 1*l*. a week.

11,264. That is quite the outside. 6*s*. and 1*s*. for each child would be more than one third. That is what I want to get at?—That is so, but if you refer, you will see that the usual rule in the city is to give the wife one third of the husband's income, plus 1*s*. a week for each child, and I have known cases in country districts where a man receiving 18*s*. to 1*l*. a week, and the wife has perhaps three or four children, the justices have simply made an order for 4*s*. or 5*s*.

11,265. That 6*s*. is inclusive?—Yes.

11,266. There is a considerable difference between the average earnings of the country labourer and even the town labourer?—That is so; but then the country man has advantages the man in town has not; the wages are not the only factor as to what the man gets.

11,267. (*Mr. Spender.*) If marriage is already regarded very lightly by these poor people and the dissolute poor, would it do much harm to give them the opportunity of coming to the Divorce Court?—It would go on perpetuating something that it is not desirable to perpetuate.

11,268. On the contrary, if they were living in irregular relations, might it not give some the opportunity of making a respectable marriage?—It might, but I do not think it would, speaking generally.

11,269. Do you think it would make it worse than it is now?—I think it would.

11,270. How so?—If you take divorce to the poor man's door, the dissolute poor man enters into marriage lightly, and I think that view of marriage would be extended, with the result that you would get what one may call experimental marriages.

11,271. I thought you said that exists now. Your words were, that marriages were regarded very lightly?—Only by some. I am talking about the dissolute, not about decent working people.

11,272. That is the point I am trying to get at. You say, as I understood you, although you would be willing to give this relief to decent working people if we had only to consider them, we could not afford to grant these facilities because the dissolute poor—those I think were your words—would take advantage of it?—Of course the dissolute poor would take advantage of this, and it might extend to those working people who are now living decent married lives.

11,273. Do you think the decent working people are more likely to be tempted towards divorce than well-to-do people by the existence of a Divorce Court in London?—I do.

11,274. The respectable working class. We have had a great deal of evidence to show that the respectable working class attach peculiar value to the marriage tie?—I agree with that, but at the same time, I think

if you have a divorce court at everybody's door there is a temptation to decent working people.

11,275. Do you think there is a temptation to the well-to-do people, that the existence of the Divorce Division in London, which can be got at a comparatively small cost, constitutes a temptation to divorce?—No.

11,276. You are thinking only of the respectable working class. Do you think they are likely to be tempted by the possibility of getting divorce at a cost which is proportionately the same to their wages, at a place which is not more accessible than the Divorce Court in London to the other classes?—I think young married people might be tempted, where at the present time they live together and get to know one another better, and eventually I believe live happy lives.

11,277. Your view is that the provision of the facility for divorce at reasonable terms, and reasonably accessible, constitutes a temptation to divorce?—I do.

11,278. (*Chairman.*) I gather from your evidence that you think that the law is at present out of reach to a large section of the community?—I do, certainly.

11,279. Do you think that state of things may not tend to a disregard of the law altogether?—Yes, there may be that danger.

11,280. Would it not be possible, if the law was placed on a proper footing, and was within the reach of the whole of the classes you have been considering, it might become more respected altogether, and their lives in accordance with such respect improved?—I do not know; I am afraid there is not a great deal of respect for the county court or the police court.

11,281. I was thinking of the law?—The amount of perjury one sees in the county courts and police courts is appalling. That is why I suggested that the jurisdiction of the divorce court should be kept in London, because I am convinced from what I have seen that people will say—and they do in the county courts and the police courts—what they would never dare to do in the Probate Court in London.

11,282. You are favouring a system by which cases might be heard in London and the expense provided for hearing them?—Yes.

11,283. Do you think that would necessarily be a better position than to hear them in the country? Might it not be said, "We can get our remedy at the "cost of the State, including a trip to London?" I was wondering whether it might not be, from your point of view, that would rather tend to increase the desire to get a divorce than if they had to go into a local court?—I do not know, I am sure. I saw Mr. Justice Bargrave Deane's evidence, and I think, if I remember rightly, he suggested that a Divorce Court judge should go round the country and try cases. That, I should think, would be as expensive as bringing the parties to London.

11,284. I am not quite sure I see that advantage you get from the point of view of morality in providing the funds and having a trip to London included in their proceedings?—I do not understand what you mean quite.

11,285. I mean as compared with a local court and a court in London. With the means of coming to London provided at the cost of the county, I cannot see myself at the moment why you suggest that the one case would not tend to immorality and that the other would. You throw in the procedure, and with it a trip to London?—Yes, but in addition to that I say that persons would be afraid of saying in London what they say in the county court at the present day.

11,286. Would they be under more check in London?—I am strongly of opinion that they would be under more check in London.

11,287. Would not there be a tendency to know that all they said in the country county court was known to the officers and the bailiffs and people who knew them there, rather than to persons who know nothing about them in the London court?—I do not think so, because one could apply that test to-day, and yet one finds in every county court people deliberately, either one side or the other, say what is untrue.

11,288. You said in the course of your evidence just now that you have some slight difference of views from Mr. Wray, the president of the society?—Yes.

11,289. Is it the case that there has been a great difference of opinion in Hull upon some of these matters?—I do not think so.

11,290. I will tell you why I ask you before you answer, because your secretary writes, "The matter "was discussed by the council, but it was felt it was "impossible to appoint anyone to give evidence as "representing the views of the society," and he suggests both you and the president to speak entirely for yourselves, and not for the society as a whole?—That is so. I am simply telling your Lordship that I have spoken to half a dozen of the leading practitioners in the police court and the county court, and they agree with me that it is not desirable to give the county court or the police court facilities for trying divorce cases. Beyond that I cannot say.

11,291. There does seem to be, judging from the letter, some difference of opinion in the matter?—I should say there would be, probably.

11,292. Mr. Wray possibly representing one view, and you another?—I did not know what my friend Mr. Wray's view was until he commenced to give evidence.

11,293. Three names were sent up from Hull; we have had two as witnesses, and the secretary pointed out that they would speak for themselves and not on behalf of the society as a whole?—I do not think the society have discussed it as a society.

11,294. It has been discussed by the council, he says — these are the finishing words of his letter: "The matter was discussed by the council, but it was "felt it was impossible to appoint anyone to give "evidence as representing the views of the society." It rather looks as if there was a division of opinion?—I may say this. The majority of the members of the council of our law society, of which my friend is president, are not advocates in the police or the county courts, and the majority of them, I should say, have not had much experience in advising in this class of case.

11,295. (*Lord Guthrie.*) Will you complete one answer you had not finished, which you made in answer to Sir George White. You indicated that there was another good legal civil remedy which was equally practically denied to the poor. What was that? I may have mistaken what you said?—Take the case of a bastardy order. A woman applies to the magistrates for a bastardy order. The order is made, and the woman subsequently dies. Nobody can enforce that order, and yet the father of the mother of the child is compelled to keep the child, while the putative father goes absolutely free.

(*Chairman.*) We thank you very much for your evidence.

Mr. WILLIAM SIMPSON called and examined.

11,296. (*Chairman.*) Are you a solicitor practising in the borough and county of Leicester?—Yes.

11,297. Are you a member of the firm of Owston, Dickinson, Simpson, and Bigg?—Yes.

11,298. You have had both a conveyancing and general practice in divorce and High Court cases?—That is so.

11,299. Have you been delegated by your law society of Leicester?—I represent them, but at the same time most of my opinions are personal. They have asked me to treat the case personally. They have not had any formal resolutions passed owing to the difficulty of getting a number of men who know much about the particular question.

11,300. Are you able to take your proof as representing the opinion of a body of men?—Generally, if you please.

11,301. First, with regard to the state of the law, what do you say, or rather the present state of the practice of the law?—My opinion is a strong one, that the county courts ought to have jurisdiction to grant divorces on the same lines as those granted to the High Court.

11,302. Is that on the ground of the present state of things rendering it difficult, if not impossible, for poor people to obtain divorces?—That is so. I feel that very strongly from the number of cases that come before my notice professionally.

11,303. You give an instance of what you call a recent poor man's undefended case in which you have acted?—That is so, last October.

11,304. You have given the total costs of that case?—Yes, just under 60*l.*—59*l.* 18*s.* 5*d.*

11,305. Was that a case from Leicester?—It was a case from the district—in the neighbourhood.

11,306. How many witnesses had you to take to London?—Four witnesses.

11,307. Were any of them professional witnesses?—None of them professionals, fortunately.

11,308. That is what it cost?—Yes.

11,309. Was there any special feature about it?—Investigation and identification questions both came up.

11,310. Have you the bill in that case?—I have not the details with me; I did not think of bringing them.

11,311. Can you tell me roughly what they were?—I have not the details with me, I am sorry to say.

11,312. Can you tell me roughly whether the preliminary expenses formed much of that amount?—That was a considerable part. When I wrote this proof three months ago the thing was fresh in my memory, but since that I have not looked it up specially.

11,313. Could you send that bill to us?—I should be very pleased to do so.

11,314. That was a case in which the petitioner's wife left him and lived with the co-respondent some years before the petitioner had the means to get the divorce?—That is so.

11,315. Then he did so with the help of friends?—Yes.

11,316. As he only earned 25*s.* a week he could never have obtained a divorce without such help?—No.

11,317. You say that this was drawn three months ago, but you mention in your proof that counsel's fees, London agents' charges, and other disbursements, formed the chief items of the total costs. Apart from that particular case, do you think that is typical, in your experience, of what the costs of undefended cases come to?—It is a little more possibly than an average case, owing in this particular case to the difficulty of identification. I think 40*l.* or 50*l.* is what I am generally in the habit of telling poorer clients who speak about divorce, many of whom think it can be given to them without any difficulty, and that it will cost from 20*l.* to 40*l.* for a simple undefended case.

11,318. With the defended cases it depends entirely upon the strength of defence and the way of fighting it?—Yes, entirely.

11,319. You have said already that you recommend that jurisdiction should be conferred upon the county courts? What do you think as to the relative position of the county courts and the magistrates?—My first impression would have been, if possible, to grant it to magistrates, on the ground that they now deal with the separation orders and maintenance orders, but my experience there is that they scarcely are a sufficiently strong tribunal to deal with cases that require trained judicial minds.

11,320. That is the substance of the point. Before benches of county magistrates you would not feel satisfied?—I should certainly not feel satisfied.

11,321. The limit of jurisdiction which you suggest is where the petitioner does not receive more than 3*l.* a week, and has no capital exceeding 50*l.*?—I merely threw out that as a general suggestion.

11,322. 30*l.* or 40*l.*, with possibly the expenses of the defence, might be a serious matter for incomes larger than that?—Up to 100*l* one might possibly say, undoubtedly.

11,323. Broadly speaking, in dealing with procedure you think that the county court procedure would do, if it were properly adapted?—I do.

11,324. With an appeal to the Divorce Division, much as there is in the summary jurisdiction courts?—Yes.

11,325. With regard to maintenance orders and separation orders, will you tell us, without going through the details of what you have here, the points which you wish to indicate with regard to these orders?—That we have been locally in the habit of granting maintenance orders rather than separation orders, largely because of the decision of the Divorce Court in Dodd *v.* Dodd. By obtaining a separation order the wife would be precluded from using the desertion as a ground for divorce.

11,326. You have had in the year 1908 only 26 separation orders as against 51 maintenance orders?—That is so, just about half.

11,327. About one third of the total?—That is so. The applicants themselves practically treat this as a technical matter for the lawyers, and it does not matter much to them, the main object being that they are to get maintenance.

11,328. Do you find in operation that the parties think themselves separated whether the order is for one thing or for the other?—Yes, it is practically the same thing.

11,329. Then you state how efforts are made to reconcile the people?—That is being more and more used, generally through the missionaries of the court and the probation officers.

11,330. You point out that the principal difficulty is private agreements, which can only be enforced in the county court. What is the remedy you suggest with regard to those?—The procedure now adopted is to ask for a magistrate's order, which, personally, I think, can be enforced much more easily than a county court order. The one can be enforced within a week with giving any evidence of means against the husband, but with the other you have to get first of all your summons out, returnable, say, three weeks or a month afterwards, and meanwhile things are running on, and it is a very dilatory process.

11,331. It has been suggested to us that in default of payment under an agreement there should be power to bring the case by way of summons at once before the magistrates, as if there was desertion. Would that make a difference?—I do not see how that would work out.

11,332. The suggestion is, if there was an agreement between the parties and a payment to be made, if default in payment were made, a summons would issue almost on the same lines as a desertion summons?—That would be convenient.

11,333. Would that meet that difficulty?—Yes.

11,334. It would be practically treating the agreement as broken, and the parties would be remitted to the position of desertion?—Yes, that would be so.

11,335. Do you find that after these separation orders or maintenance orders the parties go back and live together?—In about half the cases locally. Of course, on a matter of that sort I have the opinions of other persons than myself to guide me, because my own would be limited.

11,336. You say you have had information that out of 30 orders made in 1909 which were paid through the police court missionary, that 16 are still apart and the other 14 are re-united?—Roughly speaking, it is half and half, and that I believe is the experience of the Leicester court missionary for many years past.

11,337. That is the amendment you suggest in reference to the enforcement of these separation orders?—That is the only amendment I suggest.

11,338. That is cutting down the month to a shorter period?—Yes.

11,339. I do not think there is anything else, except what you have to put before us with regard to the

reporting of cases?—It seems to me that the same practice should be enforced with regard to divorce, as is practically used with regard to affiliation or bastardy cases. In all respectable newspapers, if they give any report, they simply state that Jane Smith obtained an affiliation order against ——, giving the name of the man fully and his description, that an order was made of 3*s.* a month, or whatever it was. I suggest that what is done in affiliation cases by the local papers should be compulsorily done in divorce cases. I do not regard a divorce case as a criminal procedure, and I strongly feel that newspapers should be restricted from publication of any kind excepting the bare facts.

11,340. The last point is with regard to the extension of the causes of divorce; you suggest an extension in one particular?—That is the only one I give, of insanity. Where the husband or the wife has been certified for two years as insane, I think that should be a sufficient ground for divorce.

11,341. Have you considered any other causes which have been placed before us as possible grounds?—Not so as to be useful to help you. I do not think that it is useful, unless one has a strong opinion and has fully considered it, to offer an opinion to gentlemen far more competent to deal with it than myself.

11,342. (*Lord Guthrie.*) In what cases in your view ought a separation order to be pronounced as distinct from a mere maintenance order?—Where a wife complains of having been brutally treated by the husband, and that she is unsafe with him.

11,343. And proves it?—And proves it. I should in all cases press for a separation order, to prevent the husband coming back to the house and forcing his way in in a drunken condition at night with children there. Many of those cases occur in connection with the Children's Society, which I have represented ever since it was formed in our district. A violent husband often forces his way into a house against the will of the wife.

11,344. If she has a separation order, on showing that to a police constable he turns the man out?—Yes.

11,345. If it is only a maintenance order the police refuse to interfere?—Yes, technically.

11,346. Even if the house was taken in her own name?—There would be much more likely to be trouble if she has not got a separation order.

11,347. In a divorce case, when the husband applies to the court he has to find security for costs?—That is so, and a very hard case often arises.

11,348. To what extent? Is a sum fixed up to which he has to find security?—That is so.

11,349. What kind of sum?—20*l.* or 30*l.* would be the lowest probably.

11,350. Is the security found in the shape of the name of a responsible person?—Usually the money is paid by the poorer people, owing to the difficulty of getting a surety.

11,351. And consigned into court?—Yes.

11,352. After that, if the wife appears to defend she makes out a motion for her costs?—Yes, and the costs in full, if she succeeds, are ordered to be paid.

11,353. In the end?—Ultimately.

11,354. What does she ask for when she comes into court?—She asks for means to defend herself and her reputation, and I take it that is the foundation of the application by the wife for her means, to show that she is an innocent woman.

11,355. Has she to show a *primâ facie* defence?—She has to show a *primâ facie* case of defence, but that is not fully investigated.

11,356. What kind of sum is allowed in the case of a working man?—That is the real difficulty. There are not many of such cases which now arise, because it is outside the scope of the means of both parties.

11,357. Supposing a working man was able to apply, with wages of 30*s.*, could you tell me roughly what would be allowed to her by way of alimony, or by way of maintenance?—Something like 20*l.* probably would be required to be deposited by him.

11,358. In addition to the original 15*l.*?—No, not in addition.

(*Chairman.*) Might I tell you the practice. The wife, when a case is being started, gets her costs up to the time of hearing, and then she gets security for the amount which would carry her over the hearing.

(*Lord Guthrie.*) About what amount would that be?

(*Chairman.*) It varies with this. The solicitor has to lay before the registrar the proofs of the witnesses he proposes to call, and the registrar fixes what he thinks will be a reasonable sum to secure for her costs. Unless the solicitor has been guilty of anything in the way of not properly conducting the case, that money has to be paid in the end.

(*Lord Guthrie.*) What might it amount to?

(*Chairman.*) It varies with the number of witnesses.

(*Lord Guthrie.*) The minimum might be 20*l.*

(*Chairman.*) I would not like to tell you the minimum; it depends upon the number of proofs.

(*The Witness.*) The point which you are asking me about is one of very great importance in connection with divorce law, because one has to point out to one's client, in case it is a man, that you not only will have to pay 30*l.* or 40*l.* or 50*l.* for your own case if it is undefended, but if your wife defends it, you will have to raise more money for hers, and also be paying her as well, therefore it makes it impracticable for this poor man to carry the thing through.

11,359. (*Lord Guthrie.*) You admit that it is a perfectly proper thing that the wife should be enabled to maintain her own case at the husband's expense?—Certainly, assuming there it is a *primâ facie* case.

11,360. (*Chairman.*) Perhaps you would like to know one further thing. I endeavoured to put some check upon a mere formal defence being put in by requiring that there should be a reasonable ground of defence before an order for security was made, and my impression is that the registrars work upon that now, so that by merely putting in a formal defence the expense cannot run on; there must be some justification for it. I think that is the practice which is now followed?—Yes.

11,361. (*Judge Tindal Atkinson.*) If the cases were tried in the county court, the security would be very much smaller than in the High Court?—No doubt.

11,362. Do you agree that each county court should have the jurisdiction, and that the judge should try in each of his courts rather than try in special centres?—Certainly, I think that very important in the interests of the suitors.

11,363. Would it be practicable to fix, for instance, the district registry in every circuit. Would that be any assistance to poor people?—It might be of assistance in facilitating the work of the court, but the registrar of a small out-of-the-way local court has not had any experience of pleadings, and does not know the way of dealing with summonses. That, I think, is the reason why in many cases they have required the district registrar only to be able to deal with cases of this kind.

11,364. As regards trial, you will agree, being the same judge, that it should be in any court?—I think it should be at any court.

11,365. In the case of the district registries, would not you have to multiply the number of the registries, because in many of the country towns there is one district registry for the whole circuit?—Speaking of the Midlands, I do not apprehend any difficulty in that direction.

11,366. The parties should have their interlocutory proceedings conducted in this particular registry and the case tried in each county court town?—I think that will be found the most convenient course.

11,367. With reference to separation orders, supposing a separation order is ultimately made permanent, have you considered whether that might not

be referred to the county court to decide; if the orders were made temporarily in the first instance for a certain number of months, and if it is clear the order is to be permanent?—That is a point I have not considered.

11,368. (*Sir George White.*) You say in your proof: "the Leicester court missionary informs me that out "of 30 orders made during the year 1909 which were "paid to him"; is it the practice of the Leicester justices to order maintenance to be paid through the police court missionary?—That is the practice; I think it is a very good one. It prevents unseemly disputes between the husband and wife when separated, and it forms a very good medium for negotiations for any purpose; for the children, for instance.

11,369. That is the invariable practice?—That is the general practice.

11,370. (*Chairman.*) Is the police court missionary an officer of the court?—He is the probation officer as well.

11,371. If I recollect rightly, the words of the Act are "through an officer of the court"?—That would be so. He is.

(*Chairman.*) I have to thank you very much for your evidence.

The following has been forwarded by Mr. Simpson as a supplement to his evidence:—

Re Davenport *v.* Davenport and Gamble.

Summary of Costs of Petitioner.

1909.		£	s.	d.	£	s.	d.
Feb. 5 to Dec. 16.	Owston and Co.'s charges.	21	0	0			
	Disbursements:						
	Amount paid to witnesses.	4	18	0			
	Other payments -	1	2	0			
					27	0	0
July 9 to Oct. 21.	London agents' charges (Messrs. Crowders, Vizard, Oldham & Co.).	18	2	7			
	Disbursements:						
	Counsel's fees -	7	19	6			
	Other payments -	6	16	5			
					32	18	6
	Total - -	-		-	59	18	6

Mr. PERCY TREVARTHIAN PEARCE called and examined.

11,372. (*Chairman.*) You are a solicitor in practice at Plymouth?—I am.

11,373. You have been selected by the Plymouth Incorporated Law Society to give evidence before this Commission?—I have.

11,374. You have presented me with a revised proof?—I must apologise for having been so late.

11,375. Is that what you would like to be examined upon?—If you please.

11,376. Perhaps it is only a little extension of the old one?—There are one or two new ideas which I have inserted which may be of assistance to the Commission.

11,377. I will take you through the new one. You have been in practice since January 1883, first in Cornwall, and since 1886 in Plymouth, and you are a member of the firm of Bond and Pearce?—Yes.

11,378. During the past 25 years you have had a very extensive practice in every class of litigation?—I have.

11,379. You have appeared as agent of the General Post Office, and frequently on behalf of the Treasury, and you act on behalf of the more important insurance companies in cases arising under the Workmen's Compensation Act?—I do.

11,380. And you also have a large court-martial practice at Plymouth?—A very large one.

11,381. First of all with regard to these cases of divorce and separation, have you had considerable experience with them?—Yes.

11,382. With regard to the granting of jurisdiction to a local court, what have you to say?—I feel strongly that the jurisdiction in divorce cases should be extended. That is the result of my association with the Service, to which I am well known. I come frequently in contact with a very large number of sailors, and during my experience, as I say in my proof, without exaggeration, I have had hundreds of cases where sailors have been away, as very frequently they are on enforced foreign service, for three years or more, during which they have been in the habit of allowing their wives allotment moneys, and on going back they have found either that those wives have cohabited with other men or they have set up a new home or been guilty of other acts of immorality, and I have been applied to in those cases to advise whether divorce was possible. I desire to point out that I do not for a moment suggest that sailors' wives are possibly more immoral than other women are. I should like to make that clear, but they have, under those circumstances, a very frequent opportunity in the absence of their husbands of straying from the right path.

11,383. I believe that their husbands who are in the Service are often away for years?—Yes, three or four years.

11,384. And the money is paid by the officials monthly to the wives, and taken out of the men's wages?—Yes.

11,385. You say that you have had hundreds of cases?—Yes. Very often this happens. Sometimes a man is going on a foreign commission, and probably there is a hasty wedding, and they may have cohabited for a month, or it may be a bit more, and very frequently they are young untried women; sometimes they come from the country to busy towns, and they occupy, it maybe, one room in a tenanted house, and there they have every opportunity of associating with other people in the house, and, under those circumstances, the acts of which the husbands not unnaturally complain have arisen. In those cases I have advised, in consequence of the financial position of the husband, that an application for a divorce would practically be an impossibility. Under those circumstances I have heard it often said by these men, "Very well, then, I shall go and set up a "home for myself," and there is no doubt that has been the result of the inability to apply for a divorce, and the wives have gone on living with these other men, or leading the immoral lives into which they have gone, and the husbands have set up homes in some instances of their own. I have, of course, realised that an application for a divorce, at such a remote distance as Plymouth is from London, is a very serious matter, and I have brought, thinking it might be of some assistance, a taxed bill in a recently undefended case, from Plymouth, in the High Court.

11,386. (*The Earl of Derby.*) Is it a sailor's case?—I am not sure, but the same rule would apply. I merely bring it up to illustrate practically what serious cost may be incurred. In this case I observe that the result of the taxation was, as against a co-respondent in an undefended case, 73*l.* 8*s.* 9*d.*

11,387. (*Chairman.*) How many witnesses?—Five.

11,388. Did all those witnesses come from the locality, or was it a case of expensive witnesses from elsewhere?—From Devonport and Plymouth, and there was one private inquiry agent also from Plymouth.

11,389. What is his charge?—His charge was only for two days, 2 guineas and his railway fare. The total professional charges there amounted to 45*l.* 0*s.* 4*d.*, and the payments, 39*l.* 2*s.* 9*d.* There was taxed off the bill 12*l.* 14*s.*, leaving the amount payable by the co-respondent 73*l.* 8*s.* 9*d.*

11,390. What is the total cost of taking those five witnesses to London and back again?—I have not taken them out.

11,391. I should like to know that, because we have had a variety of figures given before us?—I will give you the items—3*l.* 10*s.* 10*d.*, 3*l.* 0*s.* 10*d.*, 15*s.*—that was going to Welling to identify. I will analyse them presently, if you do not mind.

11,392. I think you might do it now, just the cost of coming to London and keeping them there, and bringing them back?—The first is 3*l.* 3*s.*, 3*l.* 10*s.* 10*d.*, 3*l.* 10*s.* 10*d.*, and the next 1*l.*; apparently 3*l.* was knocked off. Possibly it was allowed on some other item.

11,393. (*The Earl of Derby.*) That is four witnesses?—Yes, I thought it was five.

11,394. (*Mr. Brierley.*) What is the railway fare from Plymouth?—37*s.* 4*d.* third class.

11,395. Return?—Yes.

11,396. (*Chairman.*) What is the bulk of the 70*l.*?—Inquiries and journeys for the purpose of identification, and agents' charges, and counsels' fees.

11,397. Even in the county court those charges for identification would be incurred?—They undoubtedly would be.

11,398. What do they come to? Will you just take them out?—I am unable from this bill to analyse exactly what they are.

11,399. Do you object to leaving that bill with us?—I will leave it with pleasure.

11,400. Does that bill strike you as an excessive amount in these cases, or is it typical of what you might expect?—I generally advise that I will not have anything to do with a case under 60*l.*—an undefended case. It is practically an impossibility.

11,401. If the petitioner is a man, you have to decide whether he can afford to go on with it if it is defended?—Yes.

11,402. Perhaps you will answer the question that Lord Guthrie put. In such a case as that, what would you find, on the average, would be the cost of the wife's expenses up to setting down?—It is a case that very rarely arises with reference to poor people in our district, because we have not the applications. We cannot make them.

11,403. You have had defended cases?—Yes, but generally with people much better off, and it depends upon the amount the Master may fix. It is impossible to say the precise amount.

11,404. You could give us the cost generally up to setting down?—About 20*l.*, roughly.

11,405. After that comes the cost of the trial?—Exactly, and it becomes a very serious matter for a husband in a poor way to face a divorce case when he knows he has to provide not only his own costs, but has also to provide, and to properly provide, for the defence of his wife's honour.

11,406. The result is, that you find people of the class you have mentioned are practically without any remedy at all?—I have had a large number of cases of that kind. I have had a case during the past month of a clerk in an office in Plymouth. I daresay he may be getting 30*s.* or 35*s.* a week. His wife came to London to pay a visit, and she has been here two or three months, and I have seen the letter from her solicitor, in which she announces that she is pregnant by another man in London. The clerk wants his own child, the child of the marriage, but he has not the money, and he cannot bring the divorce. He has not the money, so what will happen I do not know. That is a case within the past month. That is not a sailor; he is a clerk in an office. If the case could be brought in the county court there would be very little difficulty in obtaining it. There is the actual confession, and it is a clear case beyond all doubt.

11,407. You say in your proof that you have practised in nearly every police court in Devon and Cornwall?—About 70 of them.

11,408. And in all the county courts in those counties, and before the county court you have had experience of some 14 judges?—Yes.

11,409. What is the result of your experience?—I would not extend the jurisdiction in divorce matters to the police court. I do not think that it is a satisfactory tribunal. I think those cases ought to be dealt with by persons with a trained judicial mind, and I think very often when they are dealt with by magistrates that there is a possibility of their having local knowledge. I do not wish to say anything deprecating magistrates, but one does know from experience that they often hear of things, and know the people, and do not always decide on the evidence that is before them. I would not give to magistrates any increased jurisdiction. We have not a stipendiary magistrate with us. If there were a stipendiary, my observations as to magistrates would not be applicable.

11,410. Would you give this jurisdiction to the county courts?—Unhesitatingly.

11,411. Would you anticipate what has been suggested to us, that the poorer people might resent having county court jurisdiction?—No. My experience of the county court judges before whom it is my pleasure to practise is that the public have confidence in them. We perhaps have been exceptionally fortunate, but I know that we very often endeavour to give consent to jurisdiction in order that we may try in the local courts.

11,412. That does not apply to a divorce case?—No.

11,413. Then you proceed to refer to the different kinds of Acts upon which the county courts act. We know all that, but I think the point comes to this, that you are satisfied that they would be able to form a satisfactory tribunal?—They have to decide much more difficult cases than divorce cases would be, cases which involve more fact than law in the majority of cases. The county courts have very wide jurisdiction in very important matters involving very difficult and intricate points of law, and you will also observe, what I have no doubt you know, that they have jurisdiction to the exclusion of the High Court in matters of great importance, such as the winding-up of companies. I think that the county court judges are perfectly able to deal with any case of divorce that may arise.

11,414. Would you anticipate any serious effect upon people's morality by having the opportunity of bringing their cases in the county court?—The only way I can suggest is by referring to the class of cases I have mentioned, the possibility of divorces taking place, and under those circumstances the parties being at liberty to marry instead of doing what they are doing, I believe—cohabiting.

11,415. There is a suggestion which has been made that it might be detrimental to the interests of morality if these people could get their decrees in the county courts, that they would begin to regard marriage with too lax an eye?—I fail to see why that should arise. We are not suggesting to make divorce in any way easier than it is at present, we are merely suggesting a change of tribunal in order that the poor may be placed on the same plane as the rich.

11,416. I gather from what you have said that it is to deal with a state of things which actually exists?—Precisely.

11,417. Then you make some further suggestions about petitions, that they should be made in accordance with the Act of 1903, when the county court has jurisdiction up to 100*l.*, with certain expenses. Do you propose the cases should only be at centres or at any court?—I suggest centres, and the basis I have gone on is this. I have maps, which I will hand to the Commission, I have had prepared, which show the places in Devon and Cornwall with which I am more acquainted, where the trials might take place, and the centres I have selected are those to which the extended jurisdiction of the county court has been applied, and also to those centres where jurisdiction in Admiralty and bankruptcy prevails, because I have assumed that those places have not been given jurisdiction unless the Legislature has carefully considered the suitability of those places, and I recognise in those centres that there must be a satisfactory staff to cope with such cases as would arise. I also appreciate the fact that where such jurisdiction existed there would be a stronger bar of solicitors than there would be in the more remote courts, because with us we have neither in Devon nor in Cornwall any local bar, so that the advocacy which prevails there is conducted entirely by the solicitors of the various courts, many of whom devote a great portion of their time to that and consultation work as I do.

11,418. If I may take it from your proof, if your suggestions were adopted, trials might take place in Devonshire at Barnstaple, Exeter, Plymouth, East Stonehouse, and Totnes, and in Cornwall at Bodmin,

Launceston, and Truro. Would those places be sufficiently accessible to parties from all parts of the country, so that they could come and lodge their cases themselves?—With reference to that point I propose that they should have an opportunity—you will see it in the earlier part of my proof—of lodging their summonses in the county court of the district where they reside, as they have the power of doing under the Extended Jurisdiction Act, lodging it in the court in the immediate neighbourhood, and it is the duty of the registrar, the summons having been lodged there, to forward it to the centre which would be applicable for the purposes of the trial.

11,419. Do you mean that the whole of the interlocutory work is worked out in the place where they live?—In the centres.

11,420. What takes place?—They would simply file their petition.

11,421. And let that be sent on?—Yes.

11,422. Who serves it?—That would be served in the ordinary way just as an ordinary county court summons.

11,423. Let us follow this out, as it is important from Judge Tindal Atkinson's point of view. If the petition is filed not in one of the places you mention, but in the nearest county court, who serves it?—It would be served by the high bailiff of the particular court through which the summons is filed.

11,424. What next happens to it?—It would be transferred to the centre where all future proceedings would take place.

11,425. Supposing the respondent, having been served out of the local place where the petitioner lived, wishes to appear and fight the case, with an ordinary county court summons, he does not appear till the day of hearing. Is not that so?—That is so.

11,426. He might in this case require to put in a defence and appear to answer?—That is a detail that would be worked out in practice.

11,427. Would you allow that to be done in the local place?—I see no objection.

11,428. And that forwarded to the centre?—Precisely; there could be no objection to that.

11,429. That means, without going into detail, giving the people the opportunity of lodging their cases close to them, appearing close to them, and trying at one of these centres which you have mentioned?—Precisely. I do not know whether it would be of interest to the Commission to have roughly the population of the two counties.

11,430. Yes?—Taken at the last census the population of the three towns, known to us locally as the three towns, consisting of Devonport, Plymouth, and Stonehouse, would be 225,000, and I think that has been considerably increased since 1901. The population, at that time, of Cornwall was roughly 225,000, and of Devon, 666,000. In each case, I think, there has been an increase.

11,431. There are nearly a million of people there?—Yes.

11,432. I will read this from your proof, just to get it on the note: "On the maps (which I now produce) I "have indicated the particular jurisdiction which the "county courts in the particular town possess. "'Bankruptcy' is denoted by a circle coloured red, "'Admiralty' is denoted by a circle coloured blue, "'extended jurisdiction' is denoted by a circle coloured "black, and 'High Court district registry' by a circle "coloured green. Where more than one circle appears "it indicates that the particular court has other "jurisdiction according to the colour of the circle"?—Yes.

11,433. Do you favour the idea that has been suggested of a High Court judge proceeding down to try these cases?—I see absolutely no necessity for it at all. I have an illustration, I think I give it almost immediately, of a case which involved a material point which would have to be decided in the Divorce Court, which was settled by his Honour Judge Lush Wilson, of Plymouth, the other day. The wife was suing her husband under a deed of separation, and the evidence set up was that she had been unchaste, and the judge had to try the issue whether or not she had been guilty of the adultery which was imputed to her. He had the jurisdiction to do that, and he dealt with it and decided against the wife. The husband there was a poor man and he has no relief. He cannot approach the High Court.

11,434. You mean he was able to fight the defence in the county court, but having fought his defence successfully he could not proceed for a divorce?—Precisely; he has not the means.

11,435. He proved that she had been guilty of adultery and got rid of the deed, but he cannot use any further proceedings in order to cancel the marriage?—That is his position. I merely illustrated that also to show that the county court judge was able to deal with it, and disposed of it satisfactorily.

11,436. Were you engaged in that case?—I was.

11,437. You proceed to say that it will be suggested that the county court is a debtors' court, and should not be utilised for such cases as divorce cases?—Yes.

11,438. There is really a sentimental and not a practical objection?—If it is desired, it can be obviated in the same way as we do in bankruptcy matters. We have our bankruptcy day in Plymouth

11,439. By allotting special days to this work, so that it should not be mixed up with anything else?—That could be done, if desired.

11,440. Is there any bar at Plymouth?—No.

11,441. At Plymouth the court sits five days consecutively each month, and you have a bankruptcy and a judgment summons day as well?—Yes, a part of the five days.

11,442. The next point is this, but I do not know that we need trouble much about it. It relates to some suggestions that have been made elsewhere, that the registrar should have greater power, so as to give more time to the county court judges?—Yes.

11,443. I do not know that that comes as a matter for us to consider. Then, with regard to this extended jurisdiction, you propose that it should be only available to persons of limited incomes?—Yes.

11,444. Have you formed any definite view as to that?—I have suggested that it should be available to persons whose incomes do not exceed 5*l.* a week. I do not think a lower sum would be altogether reasonable, because there are very many cases.

11,445. Are you speaking now of the husband's means?—The husband's means should not exceed 5*l.* a week.

11,446. There would be a good many cases where the wife does not know what the means are, and the husband has gone. We had a case suggested to us. What would be the position of the wife then?—She ought to be able to speak as to what his means were, probably, at the time they were living together. She should have some idea. I also suggest, in any case instituted in the county court, that any person who was a party to it should have the right of having it removed to the High Court, if he so wishes it, on giving security for costs.

11,447. To be fixed by the county court judge?—Yes.

11,448. So as to meet the expenses of the case in the High Court?—Exactly.

11,449. With regard to audience, you propose to include the solicitors?—Undoubtedly, for the reasons I have given there. I think, with great respect to the bar, if we are to economise, that it would be a mistake, and I think it is unreasonable and unnecessary to suggest that barristers should have the exclusive right of audience. Of course, we know that the public, if they wish it, can now have a barrister to conduct their cases in the county court, but my experience shows that facility may be availed in one case out of a hundred. In other cases the people in Devon and Cornwall are good enough to have confidence in those who practise in the various courts and allow us to deal with matters far more intricate and involved than those that would arise in divorce cases. If counsel were to come down it would not pay them; they would have very small fees, and those who would come would probably be the junior members of the bar, who would use it rather as a practice court.

11,450. I gather that the suggestion was made with a view to checking any improper practice which might take place in some instances?—We feel rather strongly about that. We hope that we are as jealous of our honour as the other branch of the profession.

11451. You would not anticipate any difficulty of that character?—Not the slightest.

11,452. You think that might be left to the body of solicitors and the judge?—I venture to think our own county court judges before whom one appears would be the best to express an opinion upon that.

11,453. With regard to the first question of separation orders, which are at present granted by the justices, what have you to say from your experience?—I would not extend the jurisdiction of the magistrates. I do not think that theirs is a tribunal by which such cases should be dealt with.

11,454. Do you think it is desirable that the present jurisdiction which is exercised should continue, or, if divorce jurisdiction were given to the county court, that the whole matter should be transferred to the county court?—The county court entirely.

11,455. The suggestion made is that the court would not sit so often as the magistrates, and that these applications must be speedily dealt with, and, therefore, that it is desirable to leave them with the magistrates?—There are certain cases perhaps of brutality, where they might grant a maintenance order. There are cases of that sort of urgency which might be dealt with by the justices, if deemed desirable, but as our county court judge sits every month, and is always getatable throughout the county during the rest of the month, I do not think any serious difficulty would arise except in cases of brutality, which I would describe as cases of urgency.

11,456. In those cases would you leave the jurisdiction to be exercised temporarily?—I think that might be wise.

11,457. And then passed on to the county court if they desire something more permanent?—Yes.

11,458. What is your objection to the tribunal at present?—The objection I hinted at just now was that very often some magistrates are not always guided by the evidence which is before them. It is quite possible to approach some magistrates. Parties do approach them in some cases, and I think that it is a very undesirable possibility. No one would attempt to approach a county court judge; he would not hear anybody.

11,459. Do you find as a matter of experience that magistrates are guided by their clerk?—Very, very much.

11,460. Does that lead to the suggestion that the clerk is the authority for the tribunal and not the magistrates?—To a great extent. There are some magistrates who, to use a common phrase, take the bit between their teeth and go their own way. They are inexperienced to some extent and are guided by the clerk, who is a trained man.

11,461. They have always a considerable experience?—Undoubtedly.

11,462. You say: "If the magistrates are to be "allowed to retain the jurisdiction"—I take it also if that jurisdiction were conferred to the county court, or is this observation confined to the magistrates?—I think it would apply to whatever tribunal was dealing with the matter.

11,463. You make some observation with regard to acts of cruelty?—Section 8 of the Act makes the Summary Jurisdiction Act applicable, and grave doubts have been raised whether you can go into acts of cruelty which have taken place anterior to the six months, which rather upsets one's idea of the true meaning of the word "persistent." I do not say that the construction placed upon the Act of Parliament is unsound, but until there is some decision of the High Court, as there was with reference to desertion, where it was held that desertion was a continuous offence, the point will be left open.

11,464. You would not limit the cruelty to the period of the six months, but you think the last act should be within the six months?—Yes. Another important point is this, and that is as to the possibility of a rehearing. A wife comes before the court, and the court, perhaps, is not quite satisfied in the first instance, or circumstances may have arisen which prevent them making an order, and they refuse an order. The result is the wife cannot go to the bench again. I had a very strong case some time ago. I was appearing for the wife, and in my view there was a very strong case of desertion. After a hearing which lasted two or three days the justices thought otherwise. In consequence of the evidence which the husband gave at that trial, which was absolutely untrue, the husband was prosecuted at the assizes for perjury, which was said to have been committed by him at that hearing. The husband was found guilty of perjury, but it was that perjured evidence which enabled him to get the wife's application dismissed, and that wife at the present moment is unable to go to the court again. She cannot do anything more; she is barred. I think under circumstances of that kind a rehearing should be allowed.

11,465. Why do you say she is barred?—Because it is *res judicata*.

11,466. Not if the desertion continues?—It was not a question of desertion in that case, or, rather, the magistrates held that there had been no desertion in fact, and therefore they had dealt with the application.

11,467. There is nothing to prevent her going home again?—It is impossible when there has been a prosecution for perjury. The feeling would be very bitter, and there would be an absolute impossibility of the resumption of the home life; in fact, it would be better otherwise.

11,468. Your suggestion is that there might be a new trial?—Exactly the same as in affiliation. The girl applies and is refused her order. She can still go on by producing new evidence. She can go before the bench again, but this wife cannot.

11,469. You mean that they have power to vary an order made by fresh evidence, but that there is no power to reconsider a case upon fresh evidence?—They have none.

11,470. The next point is with regard to extending the ground of separation to another case?—Yes, that class of case I mentioned would be cruelty in the High Court, as I understand it, but it would not come under persistent cruelty.

11,471. I had better mention what it is in order to get it on the note. You mean a case of contagious disease?—Yes. My note is: "Where a wife is able to "show that a contagious disease has been communicated "to her by the husband, I would make this a sufficient "ground alone for the granting to her of a separation."

11,472. At present that would probably be excluded by the word "persistent"?—Yes, but in the High Court I rather gather from the authorities that it would be a good ground.

11,473. Do you see any object in retaining that word "persistent" at all if cruelty is defined as safety or as affecting safety?—Personally I should be inclined to do away with the word "persistent," leaving it to the discretion of the bench to say whether there had been cruelty such as would justify their interference.

11,474. Cruelty which made living together unreasonable?—Yes.

11,475. The next point you mention we have already dealt with. You would leave out the "causing to live separate" words so as to allow the wife to sue for the order, although she still remains in the house?—Yes.

11,476. You mean cases of that kind?—Undoubtedly, where great difficulty has arisen.

11,477. I think we appreciate that point. While we are upon this point of cruelty, there is the statement which you mention, that it should not be limited to physical cruelty. What do you wish to convey about that?—I think cruelty, as at present we understand it, must be some act of violence. I do not think that violence should be essential. I have a case that has recently come under my observation of a lady of considerable position, where she and her husband have lived in the same house as husband and wife practically for some years, but they rarely, if my instructions be right, ever speak to each other. The husband does everything he can do, according to my instructions,

to treat her with contempt and disdain. Her life is an absolute misery, and the doctor only recently told me —he is a doctor of considerable eminence—if such treatment continues he fears what the result will be. I venture to think that must be a species of cruelty that ought to be dealt with, and that a wife ought to have some relief. She has her family with her.

11,478. Is it a case in which her health is affected? —It might be, but in view of the decisions, as I read them, it is not a case where it could be held to be cruelty.

11,479. I am not sure that the definition is not wide enough to include that?—I rather gather not by the decisions by which we are guided.

11,480. That would equally apply whether the application is made for separation or divorce, where cruelty is to be alleged. You mean that?—Yes.

11,481. The next point is with regard to the publication of reports?—Yes.

11,482. I should like to hear what your view about that is?—I would give the judge before whom any case might be tried power to forbid the publication of the report in any case in which he, in his discretion, thought it right to exercise it. The publication in detail of the evidence in such cases is, no doubt, objectionable, but I believe in the publication of evidence showing the possibility of detecting matrimonial offences, because I am of opinion that the fear of "being found out" is a very powerful deterrent in such cases, as many, without seeing such reports, if so inclined, would think the fear of "being found out" very remote.

14,483. Which do you think is the better of the two, that there should be deterrents, or publication so that the country at large may read all the details?—I do not suggest that they should be put out in every detail, but I do think it useful to publish the evidence which tends to show that there are facilities open to those who make inquiry to find out those who are guilty of immorality, which are powerful, and the fact that there is a chance of being found out.

11,484. Would you go further than requiring the publication of the names of the parties and the decision? — I do not see that would be of any advantage at all.

11,485. Your proof concludes without dealing with the question of the extension of the grounds of divorce? —I do not suggest any.

11,486. You leave that for consideration?—Yes.

11,487. (*Sir George White.*) Might I ask whether the typical case in which you stated the expense as 73*l.* 8*s.* 9*d.* was a case which was tried immediately, or was there any delay?—I think it was commenced in January 1909, and concluded in June.

11,488. Was there any delay in the hearing? Were the witnesses kept?—No.

11,489. You say that you have had a very large number of cases affecting the matrimonial position. Does any proportion of them belong to what we call the very lowest of the population in your three towns? —No.

11,490. Do you consider that there is any demand among that class of people for divorce?—Do you mean the very lowest?

11,491. Yes?—I am not in a position to say.

11,492. I understand that you are in favour not only of giving the county court judge power to try divorce cases, but also the separation cases?—Yes.

11,493. Except in certain instances. Would there be no difficulty in setting up two tribunals for the purpose of separation?—In practice I should assume not.

11,494. Your reasons are given in two or three ways; first, that the magistrates are not always guided by the evidence before them. You have professional men on your bench, I presume?—There are some.

11,495. Your own partner is one, I think?—No, he refused, I think, because I am a practitioner in the courts. When he was mayor of the town he was on the bench.

11,496. Do not you consider that with a rota of four or five magistrates usually on the bench, in a town like Plymouth, they are able to take a fair judgment upon matters that are almost entirely matters of fact?—That is rather a matter of opinion; personally I should prefer a stipendiary.

11,497. And, failing a stipendiary, a county court rather than the present jurisdiction?—Yes.

11,498. (*The Earl of Derby.*) In the particular case you gave us, could you give me any particular idea of what the costs would have been, if it had been tried in the county court?—Off-hand I cannot. As a matter of fact my divorce clerk handed this to me since I prepared my proof. He had rather the conducting of the case than I.

11,499. All the travelling expenses would have been done away with?—Yes.

11,500. The professional charges would undoubtedly have been less?—Very much less.

11,501. You cannot give us any idea what the cost would have been?—No, I would not like to pledge myself; I might mislead you.

11,502. (*Lady Frances Balfour.*) Upon the point of these sailors' wives, who, unfortunately, are not always faithful in the absence of their husbands, do you think if they knew they could obtain a divorce against them in the county court that that would be a deterrent as regards their conduct?—It might probably so operate.

11,503. (*Lord Guthrie.*) In reference to what Lord Derby asked you, you would have no counsel to start with in the county court; you dispense with their fees, and also with the maintenance of the witnesses, and you would have one day instead of three days? Of course, Plymouth to London means three days?—Quite.

11,504. Then the court fees would be less?—The question would arise whether you would charge any court fees, or adopt the practice under the Workmen's Compensation Act where there are no fees.

11,505. You might dispense with them altogether? —Yes.

11,506. What, roughly, do you think it would be reasonable to expect the class which you refer to to find. Would they be able to find 20*l.*?—Yes, I daresay.

11,507. With a reasonable sum like that relatives and friends will come forward to help, whereas with a big sum it is no good asking them?—I have a case where the friends offered to find 20*l.*, but I said it was hopeless to do it for that.

11,508. You would entirely object to making divorce easier in the way either of dispensing with the necessity for clear proof, or in the way of allowing collusion?—I should.

11,509. Whatever the procedure and whatever the tribunal?—Except the points I have touched upon, I should allow the law to remain as now with a change of tribunal.

11,510. In regard to publication, would not you be satisfied if the papers were entitled to publish all that is in the pleadings along with the opinion of the judge? —I would rather like it to be shown that there are methods that can be resorted to to find out the guilty persons. If that could be so published, I think it should be.

11,511. Excluding, of course, all details which are merely prurient?—Yes.

11,512. By some method or another?—Yes.

11,513. (*Judge Tindal Atkinson.*) With reference to the centres you have suggested, the divorce cases, if they were undefended, would be comparatively simple, and not last very long?—No.

11,514. One of the reasons for fixing centres under the Extended Jurisdiction Act is that the cases under that Act sometimes last a considerable time and sometimes are very important cases. Would it not be advisable if divorce jurisdiction were given to the county courts to leave it entirely with the judge to fix the place of trial in reference to every case?—He would hardly know the whole of the facts, or what the case would resolve itself into, till it came before him.

11,515. I am speaking with reference to a particular case arising in a particular district. He would know the facility with which people could come to one court or the other?—If you will look at the maps I have put

in, you will find that the distances which would have to be travelled would not be very great. I do not limit it only to those centres to which the extension of the jurisdiction applies.

11,516. Is that a map of every county court district in the kingdom?—No, my own district.

11,517. (*Mr. Brierley.*) Did I understand you to say that the county court at Plymouth sits one week in each month?—Five days.

11,518. During, at any rate, three weeks in every month the county court judge is somewhere on his circuit?—I do not say the whole of his time.

11,519. Either on his circuit or elsewhere?—Yes.

11,520. The chief constable of Plymouth on Friday last told us that the great bulk of applicants for separation orders at the Plymouth Police Court were applicants for free summonses, they having been left destitute and unable to pay. Do you agree with that statement?—I am not able to form an opinion as well as he.

11,521. He attends there?—Yes.

11,522. So that he is able to form a good opinion?—Yes.

11,523. If the evidence on that point is correct, how do you suggest that these wives who are left destitute, and unable to pay even for a summons at the police court, should act after you transfer the whole of the jurisdiction in separation orders to the county court?—That class of case I have not considered.

11,524. According to the chief constable, that is the bulk?—I think he said there were a great number of those cases.

11,525. I am not sure what he said in his evidence, but in his proof he said the great bulk?—I understand a great proportion, as the result of inquiry, of the summonses were not granted at all. That would reduce the number. When one goes frequently into the police court one does not hear a very large number of those applications.

11,526. No doubt, but I understand the practice at Plymouth is to send the police court officer or missionary and attempt to bring about a reconciliation?—Yes.

11,527. According to your suggestion, I rather understand that all these applications would have to be made to the county court judge?—So far as I know there cannot be a very large number that actually come into court and are tried. That is all I have to guide me, of course. I know nothing of what goes on behind the scenes.

11,528. I was suggesting that the chief constable did say that, and that he has very good means of knowing?—Yes, he would know.

(*Chairman.*) I think that is all we have to ask you. We are very much obliged to you for your evidence.

Adjourned.

In the High Court of Justice,
Probate, Divorce, and Admiralty Division.
(Divorce.)

Between E. T. W. - - - - - Petitioner.
and
B. L. W. - - - - - Respondent.
and
J. G. B. - - - - - Co-Respondent.

Bill of costs of the Petitioner of this cause to be taxed pursuant to decree nisi dated June 1909.

£	s.	d.	*Hilary Sittings*, 1909.	£	s.	d.	£	s.	d.
			January 1909—						
			Instructions for petition		—		0	6	8
			Drawing and engrossing same		—		1	0	0
			Fee to Mr. R. to settle draft petition and clerk	1	3	6		—	
			Attending him		—		0	3	4
			Instructions for affidavit in support of petition		—		0	6	8
			Drawing and engrossing same		—		0	6	8
			Attending Petitioner to be sworn and on his signing petition		—		0	6	8
			Paid oath	0	1	6		—	
			Paid for certificate of Petitioner's and Respondent's marriage	0	3	7		—	
			Attending obtaining same		—		0	6	8
			26th. Attending filing petition and affidavit		—		0	6	8
			Paid	0	5	0		—	
			Instructions for citation against Respondent		—		0	6	8
			Preparing citation and præcipe		—		0	7	6
				1	13	7	3	17	6
			January 1909—						
			Attending getting citation signed and sealed		—		0	6	8
			Paid	0	5	0		—	
			Instructions for citation against Co-respondent		—		0	6	8
			Preparing citation and præcipe		—		0	7	6
			Attending getting citation signed and sealed		—		0	6	8
			Paid	0	5	0		—	
0	6	0	Two copies of petition for office copies, fos. 9		—		0	6	0
			Attending bespeaking office copies petition for service		—		0	6	8
			Paid	1	4	0		—	
			Copy citation for service on Respondent at Welling, Kent (11 miles).		—		0	1	8
			Service thereof and of office copy petition, and mileage		—		0	14	0
			Copy citation for service on Co-respondent		—		0	1	8
			Service thereof and of office copy petition		—		0	5	0
			Two certificates of service		—		0	5	0
			Drawing and engrossing affidavit of service on both the Respondent and Co-respondent, fos. 6.		—		0	6	0
			Marking exhibits		—		0	2	0
			Attending to be sworn		—		0	6	8
			Paid oath and exhibits	0	3	6		—	

£ s. d.		£ s. d.	£ s. d.
	February 12th—		
	Attending filing affidavit of service of citations and returning citations into the registry.	—	0 6 8
	Paid	0 7 6	—
0 6 0		2 5 0	4 8 10
	February 12th—		
	Attending searching appearance by Respondent	0 5 0	0 6 8
	Paid	0 1 0	—
	Attending searching for appearance by Co-respondent	—	0 6 8
	Paid	0 1 0	—
	Drawing and engrossing affidavit of search and no appearances	—	0 5 0
	Attending to be sworn	—	0 6 8
	Paid oath	0 1 6	—
	Attending filing affidavit	—	0 6 8
	Paid	0 2 6	—
	Filling up application and attending bespeaking registrar's certificate to set down cause for hearing.	—	0 6 8
	Attending for the registrar's certificate to set down cause for hearing.	—	0 6 8
	March—		
	Paid	3 2 6	—
	31st. Preparing subpœna ad test and attending sealing	—	0 6 8
	Paid	0 5 0	—
	Copy subpœna for service on witness A. F.	—	0 1 0
	Service thereof at Fulham and mileage	—	0 8 0
	Copy subpœna for service on witness W. C.	—	0 1 0
	Service thereof at Chelsea	—	0 6 0
	April 7th—		
	Preparing subpœna ad test and attending sealing	—	0 6 8
	Paid	0 5 0	—
	Copy subpœna for service on witness A. W.	—	0 1 0
	Service thereof	—	0 5 0
		3 18 6	4 0 4
	April 7th—		
	Attendances searching cause list	—	0 13 4
	Sittings fee	—	1 1 0
	Easter Sittings, 1909.		
	Instructions for brief (including attendances upon Petitioner and four witnesses, some in the country and others in London, and arranging for identification by the latter of Respondent and Co-respondent at Welling—numerous attendances upon private enquiry agent perusing report by him. Attendances at Fulham, Chelsea, &c., and taking notes of evidence of Petitioner and witnesses).	—	6 6 0
	Drawing brief, fos. 95	—	4 15 0
	Fair copy	—	1 11 8
	Copy amended petition for counsel	—	0 3 4
	The like affidavit in support	—	0 1 0
	The like certificate of marriage	—	0 1 0
	17th. Fee to Mr. T. C. R. with brief and clerk	3 5 6	—
	Attending him	—	0 6 8
	Conference fee to Mr. R. and clerk	1 6 0	—
	Attending him	—	0 3 4
	Attendances searching cause list during the sittings	—	0 13 4
		4 11 6	16 1 8
	April 1909—		
1 1 0	Numerous attendances upon Petitioner during the sittings, writing him from time to time position of cause, and as to when his attendance in London would probably be required, he having to make arrangements and get leave of absence from his commanding officer (Petitioner an instructor in the R.N.).	—	1 1 0
	Paid wires to and from London as to position of the cause during the sittings.	0 4 0	—
	Sittings fee	—	1 1 0
	Trinity Sittings, 1909.		
	June—		
	Attending searching list	—	0 13 4
	7th. Paid wire to the country this cause was in to-morrow's list	0 0 6	—
	Attending Petitioner informing him cause in to-morrow's paper, and to proceed to London to-day.	—	0 6 8
	The like attendance upon two witnesses at Plymouth	—	0 6 8
0 3 2	Writing witness W. C. this cause in to-morrow's paper, and to attend court then on subpœna, and attending at Chelsea therewith.	—	0 6 8

£ s. d.		£ s. d.	£ s. d.
0 5 2	The like witness A. F. and attending at Fulham therewith -	—	0 6 8
	Journey to London from Plymouth of clerk to Petitioner's country solicitors to instruct counsel and attend hearing, and return journey to Plymouth.	—	2 2 0
3 2 10	Journey to Plymouth, railway fare and expenses - - -	4 2 10	—
	8th. Attending conference with counsel - - - -	—	0 13 4
4 12 2		4 7 4	6 17 4
	June 8th, 1909—		
1 1 0 (Note allowance for attending court, 3*l.*, covered by part allowance of item for Mr. W.'s journey, &c.)	Attending court, cause heard, and a decree nisi granted with costs against the Co-respondent.	—	1 1 0
	Drawing costs and copy, fos. 19 - - - - - -	—	0 12 8
	Attending filing costs - - - - - -	—	0 6 8
	Paid - - - - - - - - -	0 2 6	—
	Attending taxing costs - - - - - -	—	0 13 4
	Order for payment of costs - - - - -	0 5 0	0 6 8
	Copy for service - - - - - - -	—	0 1 0
	Service thereof at Welling - - - - - -	—	0 14 0
	Attending searching if amount of costs had been paid into court -	—	0 6 8
	Paid - - - - - - - - -	0 1 0	—
	Cost of decree absolute - - - - - -	—	2 3 10
	Payment schedule and obtaining payment of costs out of court -	—	1 0 0
	Sittings fee - - - - - - - -	—	1 1 0
	Agency correspondence, &c. - - - - - -	—	1 11 6
	Payments to Witnesses (including Amounts paid with Subpœnas).		
6 10 0	E. T. W. (the Petitioner), of Keyham, Devonport, Instructor of Mechanicians in the R.N.—		
	Two days' attendance - - - - - -	1 1 0	—
	Railway fare and other expenses - - - - -	3 10 10	—
	A. W., of Plymouth, wife of a 'bus driver to a hotel company—		
	Two days' attendance - - - - - -	1 10 0	—
	Railway fare and other expenses - - - - -	3 10 10	—
	Expenses of witness from Plymouth to Welling for purposes of evidence.	3 0 10	—
1 11 0		13 2 0	9 18 4
	June 1909—		
	A. F., Fulham, wife of a horsekeeper—		
	One day - - - - - - - - -	0 15 0	—
	Two attendances at Welling and travelling - - -	0 15 0	—
	W. C., of Chelsea, a potman—		
	One day - - - - - - - - -	0 15 0	—
	Two attendances at Welling and travelling - - -	0 15 0	—
	G. F. W., of Plymouth, private inquiry agent—		
2 2 0	Two days - - - - - - - -	2 2 0	—
4 2 10	Railway fare and other expenses - - - - -	4 2 10	—
6 4 10		9 4 10	—

Summary.

Page.	Taxed Off.	Total. Payments.	Total. Professional Fees.
	£ s. d.	£ s. d.	£ s. d.
1	—	1 13 7	3 17 6
2	0 6 0	2 5 0	4 8 10
3	—	3 18 6	4 0 4
4	—	4 11 6	16 1 8
5	4 12 2	4 7 4	6 17 4
6	1 11 0	13 2 0	9 18 4
7	6 4 10	9 4 10	—
	12 14 0	39 2 9	45 4 0
	Payments - - -		39 2 9
			84 6 9
	Taxed off - - -		12 14 0
			71 12 9
	Paid Taxing Fee - -		1 16 0
			73 8 9

Winchester House, St. James's Square, London, S.W.

SEVENTEENTH DAY.

Wednesday, 23rd March 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. the EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
Sir RUFUS D. ISAACS, K.C., M.P. (Solicitor-General).
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. WILLIAM HOWARD WINTERBOTHAM called and examined.

11,529. (*Chairman.*) Are you President this year of the Law Society?—I am.

11,530. Do you attend here on behalf of the Law Society?—Yes, I have been requested by the council to express their view.

11,531. One or two short preliminary questions. I believe the question of affording facilities for the trial of divorce cases in the provinces, with a view of bringing the remedy of divorce within the reach of the poor, was discussed at the annual provincial meeting of the Law Society at Newcastle last September?—Yes.

11,532. And a resolution was adopted asking the council to consider the best way of carrying out the proposed reform?—Yes, the reform being to bring the remedy of divorce within the reach of the poor.

11,533. That was the resolution?—That was the resolution adopted, and that was referred to the council to consider the best way of carrying it out.

11,534. And while the matter was under consideration you had a letter from the secretary asking the council to present their views at this Commission?—That was so; and both matters were referred to the Legal Procedure Committee to consider.

11,535. And the matter was carefully discussed there, and their report was brought up and discussed by the council on the 4th March?—Yes.

11,536. And with some trifling modifications it was adopted, and you were requested to put forward their view?—Yes.

11,537. There are 50 members representing both London and the provinces, about 20 out of the 50 being country members, who are practically elected by the country, and the country members were largely represented upon the committee?—Yes, we represent the whole profession in England and Wales.

11,538. I see from the short memorandum which you have just supplied to me that the committee prefaced their report by a statement that they did not consider that the general question of the policy of the laws relating to divorce is one on which they should be asked to express an opinion?—That is so.

11,539. They say: "It involves social considerations "of a serious character on which no doubt great "difference of opinion exists, and their recommendations are made on the supposition that, speaking "broadly, the Commission recommend the maintenance "of the existing facilities for divorce by the High "Court"?—I do not think they meant that the law should remain exactly as it was, but that they were proceeding in this upon the basis that divorce would continue on those lines or on some other lines.

11,540. Are you here to present any view as to the general alteration of the law?—No.

11,541. It is not a matter that has been really discussed and thrashed out?—No; we did not think, as a council, that it came within our province,

11,542. Perhaps you may be asked your individual views; otherwise I must leave the proof as I find it?—Then I must distinguish them as my individual views; and I am afraid that you have had so many here who know more about it, that I should not put much weight myself on my own views in the matter.

11,543. The result is, we are to ask you more about machinery?—Yes.

11,544. What is the opinion of the committee on the first important question of conferring the jurisdiction on the local courts?—We feel it is impossible to give the poor the advantage of the existing law by any other means than by conferring jurisdiction on the county courts. We have considered the other proposals; that the judges of the Divorce Division should go to the provinces and try the cases there—go on a sort of circuit of their own—and also that the business should be referred to the High Court at assizes. We do not think that would meet the case. We think there are many objections, but also that it would not reduce the costs materially.

11,545. I will come to those more in detail. Do you express the view on behalf of the committee that at present it is not possible for the poorer classes to reach the Divorce Court?—Yes; unless they sue *in formâ pauperis*, and even then I do not think the present rules are satisfactory.

11,546. That is more in defended cases than in undefended?—Of course, in defended cases the costs may be very serious. You have had estimates as to the cost of undefended cases, and I think that is about correct—with a very large margin for contingencies.

11,547. What figures have you?—I have the lowest figure given as 30*l.* and the highest 60*l.* It goes between those.

11,548. Then when you get to defended cases——?—Oh, that might be anything, of course.

11,549. Stating it shortly, you are in favour of the county courts having jurisdiction?—Yes; including the Metropolitan courts.

11,550. Place them all on the same footing?—Yes.

11,551. I should like to ask you a little more in detail about that. Did the committee consider, and do you speak here on their behalf, in relation to any differentiation between the county courts. I will make it plain in this way. Some have suggested that every county court should be given jurisdiction, and others that it should only be county courts at places central in the country?—We do not see any great advantage in that. We think all county courts should have it. That is the view of the council.

11,552. Do you think there may be any resentment felt by those who might use those courts at being relegated to them?—I did not quite catch the question.

11,553. It has been suggested that the poorer people might resent having their cases taken in the county court?—I cannot imagine that; I do not think they are any fonder of the High Court than the county court.

11,554. It strikes you as a novel suggestion?—Yes. The county courts have such an enormous and varied jurisdiction, and all sorts of people are accustomed to go there, and I think they would not feel that in the slightest. I do not agree with what has been said, that they are only small debt-collecting courts.

11,555. You fill one other position. You are official solicitor to the courts?—I am.

11,556. In that way cases sometimes come before you connected with this divorce work?—Yes; very rarely, and mostly in connection with infant cases or lunacy cases.

11,557. Then a little further about the trials at assizes. What is the principal objection which you present with regard to that?—We have already expressed our strong opinion that the present assize system is unsatisfactory for the trial of any cases in the provinces. There was an Inquiry of the two Houses on the subject, at which I gave evidence on behalf of the council; and we think there ought to be an entire reform of the circuit system; and we certainly do not want to send any more work to them under the existing arrangements.

11,558. Is that the unanimous opinion of the council?—I cannot say unanimous; I do not know that we are unanimous on any subject at all; but it is the opinion of the large majority of the council.

11,559. Is the difficulty with regard to disposing of the cases, as well as the expense?—Yes; I think the cases would not be heard satisfactorily, and the expense would be much the same, except on the mere question of witnesses' travelling expenses.

11,560. The other alternative is the sending of a judge down from the Divorce Division to take these cases?—That seems almost impracticable; because if you are going to send him round to 50 (I believe we have 56) circuit towns—if you are going to send him to any large number of circuit towns you will want a very much larger number of judges; then, of course, there would be very few cases at some places—very little work indeed; and I think it would repeat all the failures of the present circuit system. Of course, if they went to a certain number of centres, that would be more convenient. On the other hand, that would increase the expenses, because if a man has to come from a remote part of one county to Birmingham or Liverpool or Manchester it does not save him much expense.

11,561. I should like to ask on that further. Do you regard the suggestion that there might be more collusion as a material matter to consider on this point?—I have been reading the evidence, and as far as I can make out, although a good deal of collusion is suspected, it is very rarely discovered. I understood a judge to say that practically he never discovered it, and that most of the cases in which the King's Proctor intervenes are not for collusion, but for concealing material facts, such for instance as the adultery of the party who is petitioning. I should have thought the county court would have better opportunity; and I am under the impression, that whenever the King's Proctor wants information in a country district he sends to the registrar of the county court and gets it; and if the registrar of the county court made inquiries I think he would know more about a local case than the King's Proctor.

11,562. Then what you think upon the objection that there will be more likelihood of trouble in that direction in the county court is that it is not well founded?—The opinion of the council is that there is no foundation for that at all.

11,563. Then do your committee consider there should be some limitation with regard to the parties entitled to proceed in the county court?—Yes; we have suggested, as the main point is not damages, that 100*l.* should be the limit, which is the present limit for ordinary actions in the county court—that they should not be able to recover more than 100*l.* in damages; further, that their assets should not be worth more than 100*l.*, or the joint income more than 160*l.* I think that figure was suggested—3*l.* a week or thereabouts.

11,564. You have already expressed the view as to the Metropolitan county courts, that they should be placed on the same footing as the country ones?—Yes.

11,565. Then with regard to audience; you express a view about that?—We thought if, as I think was suggested by the committee over which your Lordship presided—the divorce business should be given to certain county courts, and that the Bar alone should have right of audience, that that would increase the expense again. The county court gives the right of audience either to the Bar or solicitors. The general rule is, and would be, that wherever a case could afford it, or require it, the Bar would be instructed, but that in other cases a solicitor would conduct the case; and nobody can deny that that of course would save a considerable amount of expense in the poor cases.

11,566. So far, I do not find any difference between your views and those represented by that committee?—Except that I think the committee suggested that the divorce business in the provinces should be dealt with at certain centres, and I gathered that the Bar alone were to have audience there.

11,567. Yes, I said with that exception; and there is also the exception of the Metropolitan courts?—Yes.

11,568. But, broadly speaking, the county courts were suggested and your council adopted that view?—Yes.

11,569. Then you also suggest that the fees (and of course there would be new fees for that kind of work) should be on a lower scale than at present?—Yes, in these poor cases.

11,570. Is there any objection to the county court fees?—I should like those connected more with the county court than I am to answer that; but I think the general feeling is that they are high in small cases.

11,571. That would be a matter of detail?—Yes.

11,572. But the point is to make it as inexpensive as possible?—Yes.

11,573. Now the next point you deal with is the question of separation orders?—That is a matter on which several members of our committee who had considerable experience as members of the Bench, and as practicing before magistrates, felt rather strongly, that the facilities for granting permanent separation orders were very undesirable; that if the county courts were to have jurisdiction for divorce, separation orders, if thought necessary, should be dealt with by the county court, and that the magistrates should only have power to grant temporary orders in cases in which it was necessary for the protection of the wife against cruelty.

11,574. Emergency cases?—Emergency cases, so to speak, and temporarily, so that if the wife wanted longer protection she would go to the county court and ask for a permanent order.

11,575. Your committee has adopted the view expressed by the committee you have already referred to?—Yes.

11,576. You did not specify in what you have just now said to what extent the power of the court that has jurisdiction should go. You mentioned emergency cases and so on, but in the print of your proof you refer to a specific period?—Yes, six months was suggested, I think, but that is a detail. But the point is that there should not be a permanent order, but only a temporary order which would give the necessary time to reconsider the position; and very possibly there would be a reconciliation before the permanent order was made; and that then they should go to the county court to get the permanent order if necessary.

11,577. Is that a view unanimously entertained?—We had a minority. We do not generally deal with minorities on our report; but some took a different view, but those who have had experience speak very

strongly. Sir John Hollams is a man of large experience, and he took the view as to this power of granting permanent separations, that they were granted hastily, without sufficient consideration, and led to very undesirable consequences.

11,578. It is suggested that the magistrates, once having had a case before them, if they made a temporary order would be better able to deal with the subsequent order than the county court, because they, or some of them, would have had the case already before them. Do you anticipate any difficulty if the order was made for six months, we will say, and then the permanent order, if required at all, should be made in the county court?—I should think no practical difficulty. They would know the evidence on which the magistrates made the order, and they would have the parties before them.

11,579. Then with regard to the publication of reports of divorce. What does your council recommend with regard to that?—There, again, we think that is very much a social question on which we as a council ought not to be asked to express an opinion. We think if any restrictions are imposed on the High Court they ought to apply to the county court equally; but they have not expressed an opinion on the general desirability of suppressing reports.

11,580. You have a paragraph in your proof about it. I do not know whether that represents what you wish to say?—Yes.

11,581. I do not want to suggest it to you, but if that is the view of the council, we had better have it?—The view of the council is this. I will read the paragraph: "With regard to the publication of "reports of divorce causes, the committee, while they "would gladly see some restriction placed upon the "licence which is at present allowed to, and in too "many cases abused by, the Press, do not advocate "the total suppression of reports, but they do not "regard this as a professional question upon which "the council need express any opinion. They think, "however, that any restrictions for the time being "imposed by the President of the Divorce Division of "the High Court in that respect should be made "applicable to the county court also."

11,582. There is a minor matter which is not in the printed proof you have supplied, but in the amended one, in which you suggest an amendment of the practice about giving women who are not necessarily parties to the proceedings notice of them, so that they can intervene if they like?—Yes.

11,583. That is to say that they should be served as much as a co-respondent?—They should have the opportunity. I have been told of cases in which, merely out of spite, perhaps, the name of a perfectly innocent woman is suggested, and the first thing she hears of it is that she finds in the newspaper she has been accused of adultery.

11,584. Now the general questions you have dealt with in your recommendations are practically covered by what you have already said?—I think I have covered the whole ground.

11,585. But there are some other points I should like to ask you about. You do not yourself speak, I gather from your memorandum you have sent in recently, with any considerable personal experience of divorce business?—No.

11,586. Therefore you confine your evidence to representing the views of the council?—I do.

11,587. But there is a point here which I think you can help us about. On your own account we will take this. As official solicitor in the Supreme Court you have had experience in the rules of suing *in formâ pauperis* in this country?—Yes.

11,588. You take great interest in that?—Yes.

11,589. Have you read the evidence with regard to the Scotch practice?—Yes.

11,590. And the evidence of Mr. Lock with regard to the unofficial efforts to assist poor litigants?—Yes—in this country.

11,591. Would you tell us what your view is with regard to suing *in formâ pauperis?*—I do not think the present rules in this country are satisfactory or very effective. Curiously enough, the Divorce Division is not under the same rules as the Chancery Division or the King's Bench Division on the subject of *in formâ pauperis* cases. The rule, which I think has been in existence for a very great number of years, and which I suppose had its origin in the Chancery jurisdiction, provided for the taking up of cases on behalf of poor litigants. They had to prepare a case, or somebody had to prepare a case for them, and submit it to counsel, and they had to make an affidavit that the case disclosed all material facts. Then counsel advised that they had a good case. On that they applied to be allowed to sue *in formâ pauperis;* and that entitled them, and does entitle them still in the Chancery Division and the King's Bench Division, to be excused the court fees altogether; and the court is entitled to appoint a solicitor and a barrister to represent them. I believe that power is never exercised unless the barrister or solicitor consents; but I know the feeling is, and I believe it is a correct one, that the court has at the present time power to nominate any of its officers—any solicitor or barrister—and compel him, really, to represent the party; and whether he acts by consent or in that way, he is not allowed to make any charge; in fact, it is a contempt of court if he does. He is liable to penalties in the way of imprisonment if he does charge anything; and equally so with the barrister. The result is, if a litigant gets into that favourable position, everything is done; there are no court fees; he has nothing to pay but for bringing up witnesses, and any inquiries made by the solicitor for which also he has to pay. Then he is not allowed to recover costs in that case, though the case is a perfectly fair and right one.

11,592. How does that work in fact?—I do not think it works very well, because a man does not know how to set to work; unless a solicitor takes the case up out of sympathy and helps him through with it, he very often finds himself acting in person, and that is not a convenient mode, especially if the case presents any difficulties. Then I do not think the cases are investigated sufficiently before the order is made. I had a case the other day where the claim went back a hundred years, and it started altogether apart from the Statute of Limitations, and the man had no case. He actually brought the case into court and took up the time of a Chancery judge in arguing the case. There was no opinion of counsel worth calling one; an opinion was written after the case was begun; the whole thing was very irregular, and I do not think myself the system is well worked.

11,593. You are speaking now of the Chancery and common law?—Yes.

11,594. Let us go by steps. Then there is power to nominate a counsel and solicitor, but not without their own consent?—I believe there is power to nominate whether they consent or not, but it is not exercised.

11,595. How do you think the *in formâ pauperis* proceedings in those two Divisions work—the Chancery and the King's Bench Divisions?—I think poor litigants have very great difficulty in getting their cases satisfactorily before the court under the present practice. They do not know where to go to get help, and they have nobody they can go to. They very often come to me as official solicitor, and the practice began of appointing me in these cases, but I found it was quite impossible to do all that work for the poor litigants, and the Court of Appeal dealt with that matter and dismissed the order appointing me, and declared that though they claimed the power to appoint me in any case they thought fit, that it was not convenient that my time should be altogether taken up in looking after poor litigants.

11,596. That practice of nominating counsel and solicitor does not prevail in the Divorce Division?—I believe they only get off their court fees, and I think the counsel and solicitor may be paid although the court fees are excused.

11,597. We are told the court fees are the only thing?—Yes, and that therefore is not very much help.

11,598. Would you like to suggest how this system might be more elaborated and made more workable?—Well, I was very much struck by the evidence from Scotland. I think those things are much better managed there. Of course the difficulties are not so

great there, but I believe with a little organisation the profession would help in these matters; and I should certainly be strongly in favour of the work being done by the Bar and by solicitors rather than by a Government Department at the public expense.

11,599. It has been suggested that if some such scheme as that were adopted, and money found for the poorer litigants to come up to London, that that scheme might be adopted in their cases in divorce heard in London preferably to taking their cases to the county courts. I want to know what you say about that?—Of course there remains the serious cost of the witnesses, and I confess that if a man has 2*l.* or 3*l.* per week, I think it would be much better for him to sue in the ordinary way in his local court than to pay his expenses and bring him to London and give him the privilege of suing as a pauper. It would do if it was worked as it is in Scotland; but—as was said—I suppose within 50 miles of Edinburgh four-fifths of the population of Scotland is concentrated; but in the north of England we have a larger population than in the south.

11,600. If you had to choose between the two systems, would you prefer to have the money found and the machinery arranged for, for bringing up people to London, or letting them go to the county court?—I should prefer the county court, certainly.

11,601. Has this particular point been before the council?—Not recently; not this particular question of suing *in formâ pauperis*. There is one point that the Commission might like to ask me some questions about. I am very familiar with lunacy practice, and a suggestion was made that lunacy should be made a ground for divorce. That is a very difficult question, and those who know what an enormous variety of cases you have in lunacy, would recognise the immense difficulty in dealing with such a question, unless it is guarded to the utmost.

11,602. Yes, we recognise that; but are there any points of fact which you can bring out?—Well, I heard a case the other day where a man was a hopeless lunatic for two years, and the man recovered the other day. Then there are these cases: a man is exceedingly bad for two or three weeks; he then recovers for six months; he is as sane as anybody round this table for six months in the year, and then so bad that he has to be put under restraint; and then again he recovers. Sometimes you could rely on the six months and sometimes you could not.

11,603. I think the broad suggestion made is with regard to lunacy that has endured for some time, it is usually reported as incurable?—Then he recovers and goes back and finds his wife is married to somebody else, and his children are no longer his own. I feel there are very great difficulties in the way of that. I look upon it as a disease, and if you have a man with an incurable disease nobody would think of divorcing him from his wife.

11,604. (*The Solicitor-General.*) Just on the last point, Mr. Winterbotham, with reference to the lunacy matter. Have you in your experience had cases in which a man has been condemned as an incurable lunatic—pronounced an incurable lunatic—where he has after a number of years recovered?—A case was mentioned to me by Sir Crichton Browne, who is one of the Lord Chancellor's Visitors, the other day. I have not had a case of that in my own experience.

11,605. Such a case as that would be extremely rare?—They would be rare, undoubtedly.

11,606. The cases you are putting to us are cases which would show that there should be no haste in arriving at a conclusion that a man was an incurable lunatic, That is what your observations would show?—Yes. There are many other cases. There is the case where a man may be incurable who has delusions, but they are harmless delusions; he is obviously insane, but he never gets any worse or any better.

11,607. Would such a person as that be under restraint?—Possibly not, it would depend a good deal on circumstances. If he were perfectly harmless and he had a home and somebody to care for him, he would not be under restraint; but if he was a poor man and had nobody to look after him, he might get into trouble through his delusions.

11,608. And he would have to be placed under care?—Not so much under restraint as under care; it is not restraint.

11,609. There is all the difference in the world——?—No, except that you cannot put those people under care except by placing them in an asylum. If a man is a poor man he cannot get that amount of care that he requires for his own safety, and in that case you put him in an asylum, not because he wants restraint so much as care. There are a vast number of cases in in our asylums——

11,610. Or a licensed house?—Yes.

11,611. In which it becomes necessary to provide at any rate care for the person, and also to give someone authority to restrain him in case he should break out in some form of violence?—Yes.

11,612. I suppose there is a great difficulty in knowing at what precise moment an apparently harmless lunatic may become dangerous?—Yes; it is very much a medical question, and I do not know that doctors know very much about it.

11,613. There may be a difficulty if a person who has a delusion that something will happen in the evening, and consequently they may be desirous of running away. Unless such a person is in a licensed house or under restraint in some form it is impossible to exercise any power?—You may exercise just as much restraint in a private house if you have the authority of the court to do so, but it means expense.

11,614. And it requires a certificate?—Oh, yes, it must be under certificate, of course.

11,615. In the majority of cases that have come before you of dangerous lunatics, you have had those cases?—There are very few dangerous lunatics. You mean dangerous to themselves rather?

11,616. I was thinking more of dangerous to others?—There are very few of such. I think it is the general opinion that there are, but I have been through some of the worst wards of the worst asylums and I have not been in the slightest difficulty.

11,617. But then you are going through asylums?—Yes.

11,618. But take the case of a lunatic who is dangerous to himself. There are a great number of those cases?—Oh, yes—suicidal and so on.

11,619. What I want to ask you is, speaking generally from your experience (of course it can only be a general observation), do those cases recover?—Not very often.

11,620. Even though you may have a temporary return to sanity, that still leaves the patient with a liability to recurrence?—Yes; it is difficult to lay down a general rule. Moreover, cases do not come into my hands as a rule unless they are likely to be permanent, and therefore my experience would be rather of permanent cases. If they are likely to recover, they would perhaps not take any proceedings to protect their property, or they would not appoint me.

11,621. That means the evidence you may give is of less importance on this one question, Mr. Winterbotham?—Certainly.

11,622. In your experience, I understand from what you have told us, you have never known of a case in which a person has been a lunatic for a number of years who has eventually recovered?—Oh, yes; I would not say that. I can think of several cases. I know a lady now who has been out of the asylum for many years, and I do not think she has any sign of a return of the malady.

11,623. "Been out of the asylum for many years"?—Yes, and been discharged from certificate in court.

11,624. But I am not suggesting that. Suppose a person had been certified, or had been in an asylum, for many years——?—That is the case.

11,625. Oh, she had been?—Yes, she was under my care for a good many years, and I had to look after her children.

11,626. In the case of which you are speaking, would you have regarded that case, or was it regarded, as a hopeless case?—I do not know. She varied very much. It was not a very bad case.

11,627. Really what I wanted to know is, have you ever known any case that has been looked upon as

hopeless, recovering?—I should like a medical man to answer that, but Sir Crichton Browne certainly gave me the impression that there were such cases.

11,628. I understood you to say before that you did not know of any case in your experience, but you did know of a case that Sir Crichton Browne had mentioned?—Yes, that was a very bad case—a severe one. I had not in my mind at the moment the case I have just thought of.

11,629. But that is not such a case?—That is a case where a lady was for 15 or 20 years confined in an asylum, and I visited her every year, and she was in a condition of obvious insanity, but she entirely recovered.

11,630. I quite appreciate what you said about that, but it led me to the further question. You told me you could not say her condition was regarded as hopeless?—I cannot tell you that—no.

11,631. Therefore you must exclude her from consideration. The one case you have given must be excluded, because you do not say that it was regarded as hopeless?—No; and I do not think anybody else could tell.

11,632. Therefore I am asking from your experience; except for the case you have referred to just now, which Sir James Crichton Browne gave you, you do not know of a case where a person has been regarded as a hopeless lunatic and has recovered?—I do not think I do. It is difficult to recall over 15 years. I have over a hundred in my care, and it is difficult to recall every case; but speaking generally it is a very rare thing.

11,633. That is what our attention is being directed to for the moment?—Yes.

11,634. Now, with regard to the *in formâ pauperis* suits that have been brought, I do not want to travel over the ground you have dealt with already, though I may not have heard it. Would you tell us, with reference to the practice in the courts, do you find that the certificate of counsel, which is always demanded in the preliminaries—is it not?—Yes.

11,635. Is carefully given?—Not always.

11,636. And sometimes you get a case certified as a proper case that ought not to have been certified?—Undoubtedly; a proper preliminary investigation of that case by some qualified person who was able to get at the facts would probably stop a good many of them, and they would not be allowed to sue.

11,637. That would seem to indicate that a good many of the cases *in formâ pauperis* that are brought in the courts ought not to be brought?—Undoubtedly that is so; I mean there are cranks of all sorts and kinds; and I see most of them—every judge sends them to me, if he cannot get rid of them in any other way.

11,638. What occurs to one is that, generally speaking, in the courts, the kind of person you see suing *in formâ pauperis* is what you may almost describe as the professional litigant?—Yes, there are many of those cases, and it is very difficult for any litigant in person to put his case properly in the superior courts.

11,639. And does not that rather indicate that the ordinary person who knows nothing about the Law Courts, has not the means very handy or ready for him to sue *in formâ pauperis*?—If he could get a solicitor of good standing to be interested in the case, or a client asked him to take it up and he took it up, then undoubtedly he would be able to secure a counsel who would take it up also: then the man would get very good assistance for nothing; but the system does not work very satisfactorily.

11,640. What I was going to suggest is that the difficulty is for such a person to get in contact with a solicitor of standing or a counsel of standing?—Yes.

11,641. I dare say you, like a great number of us, receive a great number of letters from persons applying for some sort of assistance in suits?—Yes.

11,642. Which it is impossible to answer?—Yes. I had a curious case yesterday. A Scotch solicitor wrote to me asking me who was the solicitor who looked after the poor people in Chester, and I had to write and say we had no such individual in this country.

11,643. If it was possible to have a department managed by a member of the Law Society, we would have a number of names on the roll to whom such people might be referred?—That is what I have wanted, and I believe there are judges on the bench who would be glad to carry out such a scheme; it would be a desirable scheme.

11,644. And no doubt you would be glad to have some person to refer to?—Yes. The Legal Aid Societies act to some extent as the poor man's lawyer, but their difficulty is, having advised a man that there should be litigation, they have to find somebody to carry it on.

11,645. Then, in the event of the matter going before the committee or board managing such an association, or such a list of solicitors and barristers ready to take charge of cases, then, upon a proper certificate, if the fees are excused, it would make the litigation very much cheaper, of course, to the suitor?—Undoubtedly.

11,646. One other question only I want to ask you about the suggested bringing of witnesses to the Court here, so that all cases might be heard in the Divorce Court in London. It would still leave open the very serious difficulty that a good many persons cannot leave their business?—Undoubtedly. Of course, in undefended cases, they are almost always heard the same day that the trial is fixed for, but in a defended case that would be impossible, and you have to bring witnesses to town and keep them here.

11,647. Shall I be right in summarising your evidence with regard to lunacy in this way: that, considering all the difficulties surrounding it, you are against divorce for lunacy on any ground whatever?—I should hardly put it as strongly as that, and again, it is my own opinion and not the Society's. I have looked upon lunacy always as I would on any other hopeless case of disease. You may imagine a case of hopeless paralysis of a man who cannot recover; you would not suggest that the wife should divorce him? This is paralysis of the brain.

11,648. Does not that strengthen what I put?—Yes, but I do not think I can put it as strongly as you have.

11,649. There are cases in which you might consider?—One has not worked the thing out sufficiently to enable one to lay down an opinion on one's own views, but I think the difficulties would be enormous in making any distinction, and you would have to give a judge the widest possible discretion if you gave him any power at all.

11,650. With regard to including the Metropolitan county courts, which is a comparatively new suggestion: you would do that chiefly on the ground of expense—that it would reduce expense in London, though not equal to the county court cases?—Yes.

11,651. And you see no real danger to society in having divorce—as we have it put here—brought to the doors of the poorer classes?—No greater evil, if it is an evil, than the present one. I think, if you let a man who can afford 50*l.* or 100*l.* get a divorce, you might allow it to a man who can only afford, say, 5*l.* The 5*l.* is as much to him as 100*l.* to the other man, and therefore I do not see that there would be any greater objection on a similar ground. Again, I must not speak on behalf of my Society.

11,652. We have had it put that if county courts have jurisdiction it would excite a desire in certain classes of society to get a divorce where it does not at present exist. Have you any belief in any such feeling being excited as that?—No doubt, a certain number of people would get divorces who would not now, and who abandon the idea because they cannot afford it.

11,653. But they would be suitable cases?—I cannot say what would induce them to go to the county court, but they would get it there when they cannot afford it now.

11,654. Still your Society are prepared to take the risk of that in order to meet the cases where it cannot be got now and should be?—Yes.

11,655. With regard to judicial separation, would you allow the summary court the jurisdiction to hear all the cases in the first instance?—The suggestion is (it is not a subject I am familiar with) that permanent orders are made far too readily by the magistrates in many parts of the country. That is not done in all parts, but they get it too easily, and it would be better that a temporary order should be made, and then, if a

permanent order is required, that the court which has to deal with divorces should deal with those cases.

11,656. That necessitates all the cases coming before the court of summary jurisdiction in the first instance?—I do not know whether they mean that the county courts should have no jurisdiction to grant interim orders; I think they ought to have, as they can grant permanent orders. I think they ought to make interim orders equally; I think it should be a concurrent jurisdiction.

11,657. But you limit the court of summary jurisdiction to orders for a time—say, for six months?—Yes.

11,658. Then would it not necessitate the rehearing of those cases before the county court?—I do not think that would be an evil. I think, if the separation orders were granted too hastily or on insufficient ground, the rehearing would be a very admirable thing. I see the evidence goes to this, and I think it would be so in many of those cases, that temper, or some trumpery cause, has led them to quarrel. The separation of three or six months might bring them together again, and I think the rehearing would be an excellent thing.

11,659. Then you think the rehearing would be rather an advantage than otherwise?—Yes.

11,660. (*The Earl of Derby.*) I want to ask you one or two questions with regard to a lunacy point. You have mentioned cases; take the case of a man where he is shut up as a lunatic and then becomes sane for a time—as sane as anybody at this table you said, I think—and then had to go back into the lunatic asylum?—Yes, that is not at all infrequent.

11,661. Does it not strike you it might be very hard lines on a woman that she should have to resume cohabitation with such a man, with the result that there may be children from that?—No doubt.

11,662. I think you would agree that insanity is in many cases hereditary?—Yes.

11,663. Is it not very hard that that woman should be compelled to have, perhaps, insane children as well as an insane husband?—Oh, yes, no doubt. That is a very difficult subject, as to whether a man who has been insane ought ever to be allowed to——

11,664. Do you think there might be some way of guarding a woman against such a risk?—I think that might be done by separation in that case.

11,665. Then you would be prepared to give her a separation order?—I should like to be excused answering those questions; I have not given the fullest consideration to all the details. I only wanted to say I felt very great difficulty in treating lunacy in that way. There are many cases in which there is physical infirmity where I would think it very hard to expect the wife to resume cohabitation.

11,666. But when you mention paralysis, there is a great distinction between that and lunacy. The wife can be there and can act as a nurse, cannot she?—In very many lunacy cases that would be equally true. There are many cases that are nearly akin to paralysis. It is mere want of the mental powers.

11,667. But in paralysis there would be no cohabitation?—No.

11,668. And in lunacy there might be?—Yes.

11,669. Then in your experience have you ever come across any cases where women are shut up as lunatics—where they commit adultery, perhaps of their own free will, or somebody takes advantage of them?—You mean before they were in the asylum?

11,670. You have never known it happen actually in the asylum?—No.

11,671. Or have ever heard of such cases?—No.

11,672. But have you heard of cases where a woman has been under restraint—not actually in an asylum?—I do not think I have known of those. I have known women who have been insane, but not certified, and who have been taken advantage of, undoubtedly.

11,673. In cases like that the woman is supposed not to be in her right mind when she does it?—Yes.

11,674. And therefore the man could get no divorce?—I presume not; I am not quite sure. I was going to say the Chairman would know more than I do about that. I have had to act in the Divorce Court for persons charged with adultery who were insane, but I cannot be certain whether the fact that they were insane at the time of the act is a defence.

11,675. You will not give any definite opinion?—I could not without further consideration.

11,676. Then there is only one other question I should like to ask you. You talk about temporary and emergency separation orders being given by the magistrates?—Yes.

11,677. Have you any definite opinion as to how long those orders should be given for? Would they be in the discretion of the magistrate or limited to a certain length of time?—I think a limit of time. I think six months was submitted in my council's report.

11,678. Six months or less?—Yes; not anything exceeding six months.

11,679. (*Lord Guthrie.*) I see in the report on page 4 you use these words which I suppose sums up the situation: "They consider the present difficulty, ex- "pense, and delay of a trial in London combine to "create hardship on the poorer classes." Does the word "difficulty" refer to what the Solicitor-General said—the difficulty of getting into contact with the machinery?—I think so; and also there is a great difficulty, as is said, in getting witnesses up—getting them away from their work.

11,680. Apart from expenses and delay, there is that solid consideration?—Oh, yes, distinctly.

11,681. With reference to what you said about the Scotch system. Suppose you had such a system in England, you would also, I suppose, approve of the Scotch system of having some form of tribunal before whom it could be certified whether there was a *primâ facie* case or not?—I think that is most important.

11,682. You understand with us there is a double system. There is the appointment of the people to act for the poor, and then there is a body who stop all frivolous cases?—Yes. That is not, I take it, an official body; it is not, I mean, a judicial body but a voluntary combination of——

11,683. It is a body who are appointed by the bar and by the societies of solicitors annually?—Yes; that is my own idea.

11,684. That would be essential?—Yes.

11,685. Would you also approve of the Scotch system, in so far as it provides that in the event of success the losing party should be bound to pay ordinary remuneration to the solicitor and the counsel for the defence?—I think the judge should have the discretion to allow it in a proper case. Of course, these pauper cases are a little hard for the litigant. If he succeeds he cannot recover. On the other hand if he loses they recover against him. First of all you would have the protection of this body you are suggesting who would not bring frivolous cases; then you would have the discretion of the judge only to allow costs in a case in which he thought it reasonable and proper that they should be allowed.

11,686. Suppose you had that protection coupled with this, that this body we have been referring to hear the defendant?—Yes.

11,687. And if the defendant is dissatisfied with their passing the case he could appeal to the court?—Is that so in Scotland?

11,688. That is so?—I think that sounds very satisfactory.

11,689. And the court do overturn the favourable opinion of those reporters, as we call them, and refuse to allow the case to go on. In short, any case must be certified by the court if the fight is to go on?—Provided that does not add to the expense. If it can be done economically I should say it is an admirable plan; because my experience is, while you want justice done to the poor, you do want to stop these frivolous cases against another person. I had a case where a man wanted to bring an action against 40 newspapers for libel, and that was a case where the Master appointed me to act for him.

11,690. Then, do I understand you would not limit this suggestion about having assistance for the poor in divorce cases; it would apply equally to all cases?—Yes.

11,691. Would you limit it to civil cases, or have it as we do in Scotland, that every prisoner is represented

by a counsel and agent, and in the inferior court by an agent?—We have a system where a trifling payment is made, and I think that is already in force.

11,692. But that is only in cases where the prosecution is by the Crown?—There I am afraid you are out of my depth.

11,693. At least a witness said so to us. Supposing that is so, there ought to be a system in all cases of prosecution, ought there not?—I think, if a man is to be helped in civil business, he ought certainly to be helped in criminal.

11,694. Then, in Scotland, we often find people are able to find the funds with difficulty, and the court in such cases has the power to remit the court fees. I will give you a case that I had recently. A nurse had been deserted by her husband and left to support the children. She qualified as a professional nurse and then she brought a divorce, and I gave it her with great satisfaction. It was represented that she was a struggling woman, and I remitted the court fees. Do you think a plan of that kind is a fair one to have?—I should think the court has the power now, but at any rate it would be a very reasonable one.

11,695. (*Sir Lewis Dibdin.*) I think you said you have 50 members in your council?—Yes.

11,696. And this Report was considered at one or more meetings?—It took a two hours' discussion at the council, and we had two or three meetings of our committee.

11,697. But at the council it was adopted at one meeting?—Yes.

11,698. Was that largely attended?—Yes. It was the longest debate we have had in my recollection. I know it was very fully discussed. I think everybody in the room spoke.

11699. If it is not going too far, what proportion of the 50 was there?—I cannot say.

11,700. Thirty?—I should think quite that but it is impossible for me to say.

11,701. You have taken no steps—probably you would not take any steps—to ascertain the views of the members of the Incorporated Law Society as a whole?—Well, we first of all discussed it at the general meeting in the country, at Newcastle. Then a number of provincial Law Societies have discussed it, and I think there is a gentleman here to express the views of the Associated Provincial Law Societies. The association consists of almost the whole of the provincial law societies, representatives of whom meet in conference; and I imagine there is no better way of ascertaining the views of the provinces.

11,702. But you have no machinery for taking the view of all your members?—Not exactly. We have 8,000, and we could not exactly do that; but in this case we invited members of the council who are not on our committee to assist us with their suggestions, and we have had communications with a great many of the country members.

11,703. You mentioned the name of Sir John Hollams, which we all entertain with very high respect, as agreeing with the report on the separation orders question?—I think I am right in saying that; I feel a little uncertainty, but I think I am right in saying he did.

11,704. May I take it, it was Sir John's view also with regard to the county courts?—I think so. He did not agree with the committee on what I may call the social view; he took a strong view the other way.

11,705. As to the points on which you have not reported?—Yes.

11,706. But with regard to the county courts?—It is a little difficult to say what every member of the Committee said.

11,707. But you mentioned Sir John Hollams yourself?—Yes, because he said that he sat on a Bench, and so on; and that helps me to remember.

11,708. Can you tell us what his views were about the county court question?—I am not sure that my memory carries me. A gentleman sitting behind you was present.

11,709. I should not have referred to it, but you mentioned Sir John?—I did over that particular point—that only.

11,710. Now do you anticipate a great rush of divorce cases to the local courts if this jurisdiction is given to them?—I think there will be a very considerable number—I cannot say what number.

11,711. Do you think that would be, as it were, dealing with arrears, or will it be a continued increase to a large extent?—I can only judge from what one would imagine would be the case. They have been debarred from that remedy at the present time, and a good many who had not been able to do it in the past would take advantage of the new rule.

11,712. That is working off arrears, as I call it?—Yes.

11,713. That would occupy a year or two; and when that is done do you anticipate a great increase of divorce cases?—I should think there would be no inconsiderable number who would take advantage of it, but my opinion is not worth much on that.

11,714. I think there are about 700 divorce cases in the year now?—Yes.

11,715. I ask you that in reference to your view as to more judges. There is a suggestion that a judge from the Divorce Court should go down and hear these cases—either one of the existing staff or an additional judge—and I think your view was that he could not possibly cope with the number?—I should hardly imagine he could. I should think, to put it at a very low figure, there would be another 700 or probably more.

11,716. You think they would be at least doubled?—My view is a mere guess.

17,717. But when you dealt with Mr. Justice Bargrave Deane's suggestion you must have had reasons in your mind?—Well, I felt, to send two judges on circuit to try the cases in the country would absorb a vast deal of their time, and they would not go more than once or twice a year.

11,718. I think the view was that the judge who went would go very frequently?—Then you would want half-a-dozen judges at the very least.

11,719. Well, take 700 cases. Why should that require the entire judicial time of six or seven judges?—As I say, I have no power of judging what the number would be; but taking the number of cases that are now tried in the county court—ordinary cases—they are enormous, as compared with the number tried in the King's Bench Courts; and you have a very large number of judges trying the King's Bench cases; and if you see the total number of cases that are dealt with in the county courts—I am not speaking of the matters the registrars deal with—they are enormously greater than those dealt with in the King's Bench.

11,720. Do you think you can make any real comparison between the number of the ordinary cases tried in the county court and divorce cases?—I should think it is some indication of the amount of business.

11,721. You think it is?—Yes.

11,722. You agree it is possible to make divorce too easy?—If it is a right thing to give it, it cannot be too easy.

11,723. You would make the opportunity of getting divorces on proper grounds as easy as possible?—If divorce is to be given at all—if it is a remedy that is desirable—then it should be made easy.

11,724. Does that follow as a matter of fact? I suggest to you that, apart altogether from the question of expense, in so serious a matter as divorce a man or woman ought to take a considerable amount of trouble about it, and ought to be expected to take a considerable amount of trouble?—I do not mind the trouble if you do not put the expense, the expense is prohibitive.

11,725. Yes, but I say, apart from the expense?—Well, I do not know what safeguards you would put on hasty applications. I quite agree it is a very serious thing, and I think most people would think so too.

11,726. Is not one safeguard, quite apart from expense—as to which I agree with you, if I may say so—that the demand or the need may be measured by the amount of trouble which a man has to take to get

it?—Yes, I suppose that applies to everything. If you want a remedy, for whatever purpose, you must take some trouble, otherwise you will get frivolous cases.

11,727. Take the case of a country district labourer who cannot get on with his wife. Do not you think, if he could go to the county court close by him, and, as I think one witness suggests, get his divorce for 2*l.* or 3*l.*, that that would be rather likely to unsettle the views with regard to the permanence of the marriage tie in that district?—You say "cannot get on with his wife," but I am assuming his wife has committed adultery. Now, if he could not get on with his wife, or the wife could not get on with the husband, she can get a separation order and get a permanent one. That is a serious thing. But I should hardly call it "not getting "on with his wife" if she has committed adultery.

11,728. Well, take a case where adultery has been committed. Do you think it should be made quite easy for a man to get rid of his wife, or for a wife to get rid of her husband without the opportunity of reconciliation?—No, I do not say that; and again I must express my own personal opinion only—I am not authorised to express anybody else's view on this—I think that suggestion of an attempt at reconciliation is a very admirable one.

11,729. Well, if a man is to take a good deal of trouble to get a divorce, it does give an opportunity for reconciliation, which does not exist if it can be got very easily or—as one of the Commissioners has put it to you—at his door?—That is true, and that is true with regard to any other remedy. If it gives you trouble to get it, you will not do it, unless you are very anxious to get it.

11,730. Now, it is put to you, do you think the poor would feel resentment at going to the county court? As I have understood the witnesses, that is not quite the point. What has been put is this, that they would resent going to the county court with the knowledge that people who had more money—people who in other respects were exactly the same as themselves—were provided with another and more expensive and more elevated court?—I do not think such pride exists amongst the people. I think that class of people are quite well satisfied with the county court as a rule, and would certainly not consider that any slight was put upon them because they could not go to the superior court.

11,731. You do not think so?—No.

11,732. You realise the position is different from the ordinary county court jurisdiction, which depends not on the riches or poverty of the parties but on the amount of the claim?—Yes.

11,733. I think you will admit that for the first time you are creating a jurisdiction that is open to people not on account of the ground of their claims—because, you would agree, one marriage is as important as another, I suppose?—Yes.

11,734. But simply because one is poor and the other rich?—Yes, but I do not see any other way of giving them relief.

11,735. But would not they consider it a drawback?—No.

11,736. Do not you think so?—No, I think it is the best thing that could be done under the circumstances.

11,737. Let us see if it is the best thing to be done under the circumstances—supposing the cost of local hearing by a High Court Judge were reduced. You are of opinion, I think, yourself that the county court fees are too high?—I think in these cases they would have to be made as low as possible, but that would have to be considered.

11,738. Supposing that were done in the High Court, and the fee difficulty were got rid of?—That is not the chief difficulty; they might be excused, and in any case they do not come to about more than 7*l.* I think in an undefended case; that is only about a fifth or a sixth of the whole of the costs.

11,739. Then what is the great difficulty of a local hearing, apart from the question of the judge being able to go round?—Well, the cost of the trial at the superior court is very much heavier than the county court, and specially if you instruct counsel; and then there is very little business done at some of these local centres, and you would have to take counsel down from London perhaps, or one of the other large centres.

11,740. I am assuming you would have audience by solicitors?—In the superior courts?

11,741. Yes?—That is a long way off I think.

11,742. You think that is impossible?—I have never wanted it, and I do not suggest it, and I do not think the Bar would approve of it.

11,743. Well, supposing solicitors were allowed to be heard if the judge went down on circuit, would that get over the difficulty?—That is one of the causes of expense.

11,744. Are there any others?—Unless you take the judges to the very doors you have to bring witnesses, and if the judge is going to 56 circuit towns it might mean a very serious expense.

11,745. Expense to whom?—And a number of judges.

11,746. But putting that aside—that is the State. What would the expense be to the party, would it be a very great additional expense to the party if instead of going to the nearest county court he had to take the trouble and expense, such as it is, of going to one of these centres?—I think it would be some saving of expense. Of course the county court is brought to the man's door, but the circuit would hardly do that.

11,747. I am suggesting it would be making it a little too easy—the county court?—Well, I do not agree with that.

11,748. Now, with regard to audience, you know the Lord Chancellor's Committee recommended that counsel ought always to be employed even in undefended cases?—Yes.

11,749. You do not agree with that?—I do not.

11,750. Supposing they were considered essential and that view were adopted, would you still be in favour of the county court?—I think I should even then. I think it would be cheaper in other ways.

11,751. Even if you had to take counsel?—Yes.

11,752. Would that be true in remote country courts, say in Northumberland?—Well, of course you have to take a bar to Northumberland—I think there is a bar at Newcastle now. The local bars are extending very largely, and places have them now which had not before.

11,753. Well, take Plymouth, which we had yesterday, where there is no local bar. Would you be in favour of the county court system in Devonshire and Cornwall?—I think on the whole it would be better—putting other questions aside—but I do not see that you could economise seriously in the superior courts.

11,754. I see your committee is in favour of trial by judge alone without a jury?—Yes.

11,755. Supposing the possibility of having juries is considered essential, what do you say then?—I suppose they would be the same then in the county court as in the other courts.

11,756. Would you regard a county court jury—as constituted at present—as good as a common jury?—Yes.

11,757. You think it is as good as a common jury?—Yes.

11,758. What about the number?—I have very little experience of the county court. I should rather you asked the gentleman who follows me about that.

11,759. I wanted to ask you a question about the separation orders. I am not sure that I quite grasp your point of view about making them temporary only. At present you know there is a very large proportion of reconciliations after the orders have been made?—Yes.

11,760. A very large proportion indeed?—I take it so.

11,761. Some witnesses have said as much as 75 per cent., and other witnesses 50 per cent. or 60 per cent., but a very large proportion. So that the order as it is granted now does not prevent the people coming together again?—No.

11,762. It has been suggested to us by some witnesses that if you made them specifically temporary, say, for six months, it would actually have a deterrent effect from reconciliation—that the parties (particularly

the wife) would feel that until the six months was over nothing could be done, and she must stop away for six months?—It is very difficult for me to know what wives would think under those circumstances; but am not I right in saying they can come together at any time they choose?

11,763. Yes, but do not you see in the present system the orders are nominally permanent, though it would be more accurate to call them indefinite, and the parties come together again as easily the next day as six months after; but if you make an order for six months definitely, would not there be a danger that people would not come together again who would do so if it had not been for that definite period?—I hardly think so, but I think the council were against the permanent orders being made by the magistrates. They thought they should be made temporary, and if they want permanent orders it should be at the hands of the county court, who would deal with it as a branch of their divorce business.

11,764. It has been suggested an order should be made rather of the nature of a rule nisi with an interim allowance for maintenance because of the great difficulty as to how the woman is to be supported. Have you considered that suggestion?—No, I have not.

11,764*a*. (*Judge Tindal Atkinson.*) Mr. Musgrave, the Taxing Master in the Divorce office—you know him, I daresay?—Yes.

11,765. He said in London the average minimum undefended case would be about 40*l*. or 50*l*. trying it in London.—Yes.

11,766. Supposing the cases are tried at the assizes and the parties have to travel some distance, would not the cost be probably about the same?—I should think there would be no serious difference.

11,767. Is there another objection to the assizes that, owing to the nature of the business done at the assizes, it would be impossible to forecast the time when these cases would be taken?—As the business is done at present, certainly.

11,768. And would it be a very serious objection or misfortune to these poor people if they are brought to the assizes and then have their cases adjourned to another day?—Yes, I do not think anybody who knows anything of the matter would be in favour of trying these cases at the assizes—any practitioner, I should say. There is every possible objection to it and nothing in its favour.

11,769. Then as to the judge travelling from the Divorce Court, the same objection would apply if he had to sit in the assize towns to a great extent?—Yes.

11,770. If you sent him to four towns in every county court district then that would involve sitting in about 200 different places every year?—It would be impossible.

11,771. Then about the juries, I understand your society think it would be better to try these cases before a county court judge alone?—Yes, that is the suggestion.

11,772. A suggestion has been made that it might be possible that the quarter sessions should nominate a rota of justices in the county, and that two should always sit with the county court judge when he took his divorce cases, so that you would get a tribunal of fact as well as law?—I have not considered that.

11,773. Do you think that would be a good suggestion?—I should be sorry to express an opinion that would not be of any value, but I do not see any objection to it immediately.

11,774. In reference to the parties suing *in formâ pauperis*, that would save them from the fees?—Are you speaking of the Divorce Court now?

11,775. No, supposing you apply the King's Bench practice?—It would save the fees and all the solicitor's and barrister's expenses.

11,776. If the proceeding is remitted or transferred to the county courts the rules as to *in formâ pauperis* in the county courts would be the same as in the High Court?—I presume so.

11,777. So if the party wanted to sue *in formâ pauperis* in the county court the same practice would be adopted as is adopted in the High Court now?—Yes.

11,778. Supposing the King's Bench practice is adopted if the cases were tried at the assizes, all that would be saved are the court fees, and the counsels fees, and the solicitors' fees?—Well, that is the bulk of the costs.

11,779. And then comes the question of witnesses?—Yes.

11,780. As you know, I suppose in these small cases it is of the utmost importance to these working people that they should not be kept from their work?—Yes.

11,781. And therefore a delay would be a most serious objection from that point of view—with regard to the poor people losing their work, and it may be losing their situations?—Yes.

11,782. As to damages, you would fix that at 100*l*.?—Yes.

11,783. Some witnesses have suggested that the poor people should be helped by the public funds to come up to London. Do you think there would be any possibility of getting over the objection that they should be compelled to pay out of the public purse the cost of litigation in a private matter?—I can only say that my experience of the Treasury would not give me much hope in making such an application; I cannot say more.

(*Judge Tindal Atkinson.*) Then one word about reconciliation. It is suggested by Sir Lewis that it is an advantage at the present time that there should not be facilities, because the parties are obliged to live together because they cannot get a divorce, and that that amounts to a reconciliation.

(*Sir Lewis Dibdin.*) That is not the form I suggested it in.

11,784. (*Judge Tindal Atkinson.*) Would not the county court judge have a better opportunity than anybody else if he thought, in the nature of the case, it was desirable to bring about a reconciliation?—Well, as has been said in this room before, I think, there are judges and judges, but most of the county court judges, I should think, would be very capable of assisting in that way, and more capable because they know more of the parties.

11,785. Then there is a point I want your opinion upon. Some gentlemen think that the county courts should take these cases at centres?—Yes.

11,786. Others think they should take them at all county courts, but that the interlocutory proceedings should be instituted and carried on at the district registry of each court. Do you see my difficulty in the registrar of every court dealing with the interlocutory matters which would arise in divorce cases?—No, I do not at all.

11,787. Are they so complicated that they could not do it?—I think they are more complicated in London than they need be. I never have understood why the Probate and Divorce Courts are outside the ordinary courts, and why they do not begin their proceedings in the identical way the others do. I have had it put to me very strongly that the cost of proceedings in London—the petition and citation and so on—add unnecessarily to the costs.

11,788. (*Mr. Brierley.*) With regard to your proposal that on the expiration of six months a wife who desires a permanent separation order should be compelled to apply to the county courts, have you considered the fact that has been spoken to by a good many witnesses that a very large proportion of the wives who apply for these orders belong to the class of the extremely poor?—Yes.

11,789. So poor that the provisional fee of three shillings required for the police court summons is a matter of great difficulty to them?—Well, some of them are as poor as that, no doubt.

11,790. If your proposal was adopted, would not that be placing a very great difficulty—assuming a proper case for permanent protection—in the way of a very large proportion of the women who apply for these orders?—I suggest that the fees should be small and I should have thought the expense of going to the county court would be very small also in such a case. I do not know enough of the practice of the county courts to tell you that.

11,791. Would not those wives be under much the same disabilities with regard to obtaining separation orders as the persons of a rather higher class are now with regard to obtaining divorces?—I should not have thought so. You mean the difference between the cost of going to the magistrate and the county court would be as great as between going to the county court and the superior court?

11,792. I should suggest so?—I should not have thought so for a moment. I am not very familiar with the costs of the county court. If they are as high as that, they ought to be reduced, certainly.

11,793. I think some witnesses have said that the obtaining of a divorce in the county court would be about 10*l.*?—I saw somebody said 5*l.* and somebody said 10*l.* It is very difficult to fix. It depends on the witnesses and the distances they have to come.

11,794. But you would agree that to a very large proportion of women in the police court even 10*l.* would be a difficulty?—I should not approve of any system that would compel a poor woman to pay 10*l.* to get a separation order; and if that is what it would mean I should be against it. But I cannot think it would cost that.

11,795. (*Chairman.*) I gather from what you are saying that in any case, whether it was a magistrate or a county court, you would have the order in the first instance limited in time?—I think that was the main point that was in the minds of the council, that they think these maintenance orders are made too readily and in enormous numbers by the magistrates.

11,796. Would that view be fortified by the fact that we have been told in some cases 75 per cent. and in others 50 per cent. are reconciled?—Most certainly. A temporary order would lead to a reconciliation, I think.

11,797. And that shows that the bulk of these orders which are made are not suited for meeting the needs of those cases?—Yes.

(*Chairman.*) I have to thank you, Mr. Winterbotham, on behalf of the Commissioners for coming here to give evidence.

Mr. WILLIAM ENGLISH HARRISON, K.C., called and examined.

(*The Witness.*) May I state the position I desire to appear here in, my Lord? Your Lordship is aware that my name is William English Harrison, and I am appearing as chairman of the General Council of the Bar, and not in any other capacity, I desire to state shortly what the General Council is. It consists of 48 elected members, who are elected by the practising members of the Bar, of whom six are obliged to be of under ten years' standing, in order to bring in, amongst others, the younger men who are more acquainted with County Court practice. In addition to those 48 gentlemen, of whom half retire annually, so that half the Council is renewed annually for the purpose of being in complete touch with the practising members of the Bar, there are six additional members who are co-opted on to the Council—gentlemen who have some particular portion of the Bar more immediately in their professional cognisance, or any distinguished parliamentary member whom it is desirable to have as a member of the Council. The Law Officers of the day are ex-officio members—that is the Attorney-General and the Solicitor-General, and the ex-Attorney-General and ex-Solicitor-General. The present Solicitor-General is therefore an ex-officio member, and was before that date one of the co-opted members and served on the body for some time. That being the position, I think I can now tell your Lordship what the Council consider should be put before this Commission in answer to the questions which were, I understand, circulated amongst various public bodies for the purpose of obtaining information as to their views. I will read the report of the Council, and I might elaborate one or two matters as I go on.

11,798. (*Chairman.*) The questions indicated the subject-matters for consideration?—Yes, my Lord. I commence at paragraph 2 at the top of page 2: "The matters to which the consideration of the Council "has been invited include, as will be observed, not only "the administration of the law in divorce and matri- "monial causes, but (amongst others) questions as to "an amendment of that law, as well as questions "relating to the publication of reports of divorce and "matrimonial causes. Such questions involve the "consideration of variations and extensions of the "grounds of divorce, upon which the Council, in view "of the differences of opinion existing upon the "Council, is not prepared to express any opinion." Of course the council contains gentlemen of various religious beliefs, and their religious beliefs to some extent influence their opinions, and there is a variety of opinion on the Council on all these matters. "There "is room for much difference of opinion in applying "the law to such issues as are raised in matrimonial "causes. Hitherto it has always been considered that "uniformity of decision, and dignity of procedure were "essential. This end has, up to the present time, been "attained by limiting the trial of such causes to a "court specially constituted and experienced."

11,799. That leaves out of consideration that the Ecclesiastical Courts sat all over the country before 1857?—Yes. But we are only dealing with the existing Divorce jurisdiction.

11,800. Yes, I know, but one must remember that deprived the Ecclesiastical Courts of their ecclesiastical jurisdiction and concentrated it in London, so that that has not always been so considered?—No, my Lord, but that is not the present system. "If any "alteration of the present system is to be adopted, "the Council is of opinion that it is desirable that such "issues should be dealt with by a small, rather than a "large, number of judges. 4. The Council is strongly "of opinion that no proposal to confer jurisdiction in "divorce and matrimonial causes on county courts "should be entertained, having regard to:—(1) The "large number and varying qualifications of the "County Court Judges. (2) The difficulty of depriv- "ing litigants in matrimonial causes of their right to "a jury, and the character of county court juries "generally." On the subject of juries we thought that the assistance of a jury composed, many of them, of fathers of families and gentlemen of experience in life, was of very great assistance in arriving at the truth in such contested matters of fact as came before the Divorce Court. We thought that was a very valuable asssistance rendered by gentlemen of experience in the ways of the world and that that ought not to be abandoned.

11,801. We are told that the county court juries are selected from the same class as the common juries in the High Court?—I think nobody can fail to observe that county court juries are not of the same satisfactory class as those who are in the other courts. They are supposed to be summoned from the same panel, but, as your Lordship knows, the service on different jurymen is not very satisfactorily accomplished, and there is a good deal of room for variation of the class of men who ultimately arrive in the jury box. I do not think that anybody who has practised in the county courts as I have (though not very lately) can fail to observe the marked difference between the juries who appear in the High Court and those who appear in the county courts. "The varying qualifications of the "advocates entitled to practise in county courts." That is an allusion to the solicitors who practise, as well as the Bar, because the Council attribute great importance to the fact that by having counsel practising in these divorce matters the whole tone of the case would be kept on a higher level because the advocates for the parties in many of these country districts do not appear very often in court. Many of them are not solicitors of very large practice, and, therefore, the Council attribute great weight to the assistance of counsel in these cases. I need not labour this before your Lordship, because, I think, your Lordship has make the observation more than once that the presence of counsel in these cases is of the greatest assistance to the Court, not only in actually determining the questions that have to be tried, but in informing the Court of anything that might lead them to think there was collusion or

connivance, or suppression of material facts. Counsel are of great assistance in that way to the Court. Then another matter which perhaps it is not immaterial to observe is that some of the advocates are not, perhaps, quite happy in their modes of advocacy. The advocate in cross examination has, of course, enormous powers, and unless those powers are kept within due bounds they are apt to be abused, or, at any rate, not conducted in the same style, or on the high plane, as counsel who are experienced in advocacy do conduct their cross-examinations. Then another matter which I think is not quite immaterial is this—that the discipline over the Bar is a very severe one, that is to say, the Benchers of the Inns of Court, or the Bar Council, have complete control over the Bar, so that if there is any transgression in any way from the ordinary rules and etiquette of the profession the barrister is at once checked, and, I will say, admonished by the other members of the profession who have had more experience, perhaps, than they have had. That is not unimportant in considering the class of advocates it is desirable to have in these divorce cases. Then the fourth matter is*: "The "present congested condition of business in many of "the county courts, the difficulty of obtaining con- "tinuity of trial, and the consequent expense." That was put in in consequence of the information we had from the various members who from time to time practise in the various county courts, of the frequent occasions on which they have found the county courts on a particular day blocked up with business and they have been obliged to attend on a subsequent occasion. That might be arranged, but at present that is a difficulty. One member of the Council described how he had been three times at a county court in a distant part of the country. The case could not be continued the next day because the county court judge had to be at another place, and it was resumed on a second day, and it was not finished, and he had to go back a third time. Then: "paragraph 5. *Mutatis mutandis* the "observations of Lord Gorell's Committee on County "Court Procedure (*see* page 24), with regard to the "jurisdiction of justices of the peace and stipendiary "magistrates in granting separation orders under the "Summary Jurisdiction (Married Women) Act, of 1895, "apply with at least equal force to the exercise of "divorce jurisdiction by county court judges."

11,802. Was that extended to stipendiary magistrates?—Yes, I was going to read the passage if I might. It is at page 24 of the Chairman's Committee on County Court Procedure. What the report says, at page 24, is this: "Moreover, courts of summary "jurisdiction held by justices of the peace, or even "stipendiary magistrates, are not the most satisfactory "tribunal to select for the purpose of making orders "which have a lifelong effect upon the parties and "their children. It is a very difficult and delicate "jurisdiction to exercise, and, although the appeals "have not been numerous, owing, no doubt, partly, if "not mainly, to the poverty of the parties, yet they "frequently disclose what it is natural to expect, that "courts whose main business is with numerous small "offences have often not the general attitude towards "these cases which their real, though possibly not their "apparent, gravity requires." You observe there that the "general attitude" towards these cases is alluded to by the draughtsman of the report, and by the committee who signed this report, and we think that applies equally to courts where mere debts, and small debts, are largely collected, and which have not had any possible experience in this class of jurisdiction at all. Therefore we thought those observations would apply with equal force and bearing to county court judges when the profession assumed that even in the case of stipendiary magistrates they are not perhaps the most satisfactory tribunal you can have. Then paragraph 6: "The council thinks that the poorer classes "should be placed in a better position to obtain relief "in matrimonial causes, and to accomplish this object "suggests that provision should be made for the trial "of matrimonial causes on circuit by a judge of the "High Court, with or without a jury." The council thinks that the real difficulty is that the litigant has a difficulty of accessibility to a tribunal where he can get his divorce, and it seemed to be rather a question of degree. On the one hand it has been suggested that every small county court in the country should grant divorce—to which the council are entirely opposed: they think there are considerable evils in it—and they think, by giving power to the judge of the High Court on circuit, with or without a jury, that very substantial relief to many large masses of the population would be afforded.

11,803. Is that the judge of the assizes, or a judge, as has been suggested, going round from the Divorce Court?—No, the judge on assize; not a judge who goes round as has been suggested from the Divorce Court.

11,804. Has the council considered that the judge of assize visits the counties mainly only twice a year?—No, my Lord, that is not quite so. There are three circuits. There is a criminal circuit between October and Christmas, and one between January and Easter and another in the summer; so that there are really three assizes. On two of those three only is civil work done, but I think we should suggest that at each of the criminal assizes the judge on the circuit should have jurisdiction to take divorce cases. May I say, as your Lordship is aware, there are upwards of 56 towns at which assizes are held, and at some of the larger centres of population, such as Liverpool, Manchester, Birmingham and Leeds, and I think now Bristol, there are four circuits. So that enormously relieves matters in populous places, because in Liverpool the population is about 684,000, Birmingham is about 522,000, which is less, and Manchester about 543,000, and you are affording a substantial relief to very large numbers of the population.

11,805. I should like to put these points to you. Even in the four circuits there would be three months between?—Yes.

11,806. And in three circuits there would be four months?—Yes.

11,807. And in some there would be six months interval?—Yes, there might be upwards of say four to possible five months, when the suit was commenced just before the circuit arrived there.

11,808. Has the council borne in mind that in these matrimonial cases, where the people are poor especially, it is almost essential that the case should be disposed of at once?—The council is of opinion that there should not be too much hurry in rushing to the Divorce Court immediately, that there should be some *locus pœnitentiæ* for the effecting of reconcilement between the parties, if possible, and they think a delay of something like two months, which would be the usual delay, would not be an unreasonable delay.

11,809. Take the common case of a labouring man's wife, where the man has committed adultery and been guilty of cruelty, and that is easily proved because in some cases they are in the same village or town. What is the suggestion as to what she is to do if she does not apply for a separation order, but applies for divorce during those four or five months?—That is true in everything. There is always some difficulty in the way of everything, but you must take the thing as a whole. The council are all very strongly of opinion that it is of the very greatest importance that divorce should also be considered from the point of view of the State, because, after all the breaking up of the family, and considerations with regard to the children of the marriage, and all those other matters which I need not allude to because they are present to the mind of every Commissioner here, are matters that must not be lost sight of, and that the desire for immediate and speedy justice is only one of the elements that has to be taken into consideration. In view of all the different matters which ought to be taken into consideration in dealing with such a difficult and complicated subject, they do not think such a delay as that is an undue delay for the purpose of settling the status of parties, and so affecting the children.

11,810. It is suggested by some witnesses that in many of the counties it is as difficult to get from some parts of them to the county town as it is to get to London?—I think that only applies in some very few

* *See* with further reference to this, App. VII., p. 60.

instances. That could easily be remedied, from my point of view, by altering the position of the assize towns. In many of these counties the assize has been held at a place where, owing to the development of the railways, it has fallen out of the main line of traffic and it is not the most convenient town from the point of view of accessibility; but I look upon that as a detail that ought to be arranged not only with a view to divorce but with regard to the criminals that have to be tried, and the common law litigants who have their ordinary suits tried. That is an objection which is equally valid as regards the existing litigants who have to find their way to these towns now. I daresay an improvement might be made in that way, but I do not think that applies, as far as I can tell from a limited experience of having gone circuit, to many counties.

11,811. Then there is the point that the expense of the trial at the assizes would be practically the same as in London from the point of view of railway fare?—Might I deal with that when I deal with the question of *in forma pauperis*?

11,812. Very well?—Then clause 7, my Lord: "7. Such causes might be commenced by process in "the district registries and continued there; and the "papers should then, before the case is tried at the "assizes, be forwarded by the district registrar to the "principal registry in London for examination; and, "after being passed as in order by the registrar, should "be returned by him to the officials of the circuit; "8. To facilitate further the trial of the matrimonial "causes of the poorer class of suitor, the judge of the "divorce division should, in the opinion of the council, "have power at any stage to transfer the proceedings "from or to London or any district registry, and in "all cases to fix the place and mode of trial; the judge "who presides at the trial having power to make the "necessary decree or decrees; to afford relief to the "poorer suitor, the council thinks that it is essential "that the practice in suits *in formâ pauperis* existing "in the Divorce Court should no longer be continued. "Under the existing system the suitor is only relieved "from the payment of part of the court fees. No "counsel or solicitor is assigned to the suitor, and the "payment of fees to counsel and solicitor is as a rule "enforced." Then your Lordship has a reference to the case in which the whole matter was discussed. I need not deal with that. "The council thinks that in "suits *in formâ pauperis* no court fees, or fees to "counsel or solicitor, should be payable by the pauper "(*compare* Rules of the Supreme Court, Order 16, "Rules 25 to 28)." Perhaps I might call attention to those a little more in detail, because I think, in view of the questions which I think Lord Guthrie put; it may be material. Rule 26 in the King's Bench Division provides that: "Where a person is permitted to sue or "defend as a pauper, the court, or the judge, may, if "necessary, assign a solicitor or counsel, or both, to "assist him, and the counsel or the solicitor so assigned "shall not be at liberty to refuse his assistance unless "he satisfies the court, or the judge, that he has some "good reason for refusing." So that the Bar is under an obligation, if the judge makes an order, to take up a cause. In practice it is general to get them to consent. At the Bar, which is always a generous profession, there are usually a dozen men who would take it up.

11,813. Is there any rule compelling a solicitor to take it up?—Yes, "and if necessary assign a solicitor "or counsel or both to assist him, and the counsel or the "solicitor so assigned shall not be at liberty to refuse." Then one word upon the way in which, as a rule, it is done. The council are of opinion that the existing rules relating to *in formâ pauperis* litigation in the King's Bench Division are not satisfactory rules at all, and it is for that reason they do not suggest that the practice in the Divorce Court should be the same as now existing in the King's Bench Division, because we do not think the existing practice is satisfactory. As your Lordship is aware, there is a rule which says any person may be permitted to sue or defend as a pauper on proof that he is not worth 25*l.*, his wearing apparel and the subject matter of the cause only excepted. £25 is a limit which I think unsatisfactory, and we are not prepared to recommend that the practice of the divorce court should be assimilated to the present practice in the King's Bench Division, because we think the whole of that practice requires readjustment, and I think the council would approve of that suggestion by the witnesses, including Mr. Winterbotham, that 100*l.* a year would be a fair limit as drawing the line where a man is a pauper or is not a pauper. At present it has been decided actually that a police constable who had 70*l.* a year income which he alleged was inadequate to provide the necessities of life for himself and his wife, was not allowed to become a pauper. He was expected to provide all the ordinary expenses. According to our idea that is not a proper method of dealing with pauper litigants at all, and the suggested rule of putting it at 100*l.* a year or 150*l.* a year does not seem to the council at all unsatisfactory; they would say nothing about that. Of course the 160*l.* is roughly about 3*l.* a week, and you have the provision in the income tax that exempts anybody with less than 160*l.* a year from paying income tax at all.

11,814. How does this *in formâ pauperis* procedure you suggest meet the case of the husband who has to provide for the costs of the defendant, his wife?—Well, of course, that he would not have to provide at all. If he once has his order to sue *in formâ pauperis* he would not have to provide for the costs of the wife. I should have thought she would necessarily be entitled to an order to defend *in formâ pauperis* also.

11,815. But that involves some expense?—It does involve some expense.

11,816. Where is she to get the money from unless the country provides it, or he does?—I do not think you can ever provide for absolutely impecunious people unless you authorise some public authority to provide them with the money.

11,817. In the ordinary litigation there is no necessity for providing for the costs of the other side, but in all these suits of husband against wife he has to do that or she cannot fight at all?—Yes, exactly; and even if the wife brings a suit against him he has to provide her costs, and if she fails to establish her charges, he still has to pay the costs, which seems a rather strange result, speaking personally, that the husband should have to suffer in that way. Now, may I say a word in reference to actions *in formâ pauperis*. The method of dealing with *in formâ pauperis* in trivial cases where the order has been made, is to take out a summons before a judge of the High Court to dismiss the action as frivolous and vexatious, so that if a man improperly obtains an order to bring an action *in formâ pauperis*, the other side can at once take out a summons to dismiss his action as frivolous and vexatious on the matters he brings before the judge.

11,818. I know, but I should like a little more assistance as to facing these difficulties. It is suggested if a divorce case is started in the country, the defendant has no means of taking out a summons at all without doing it in London, and he cannot do that without getting a solicitor or doing it himself?—If the suggestion is taken that all the process should be at the district registry and he should do it there, there are a very large number of district registries at all convenient towns in England and Wales. There are a very large number of district registries, and in all the greater towns, such as Manchester and Birmingham, and so on, there are particular district registries for those towns. So that a large number of the population would have their needs met in that way at once. Then, No. 10: "In the opinion of the council, the "conferring of jurisdiction in divorce and matrimonial "causes on judges of assize, coupled with the sug- "gested extension of the procedure *in formâ pauperis* "to such causes, would afford all the relief required." Now, there is one matter (I do not know whether it has been brought before the Commission) which strikes the council, and it is this, that in county courts the county court has a jurisdiction limited to its own district. Where people commit misconduct, as a rule, they would move away from the place where they had committed that misconduct, and very likely, in very many cases, move out of the district. That would, first of all, give rise to the question: Are you going to bring the suit for divorce in the district of the peti-

tioner, or are you going to bring the suit for divorce in the district where the respondent and the co-respondent have moved to? Ordinarily, of course, you would bring it in the district where the respondent and co-respondent had moved to.

11,819. Why do you say that? Why not in the place where the parties were living?—Well, whichever way you take it, it does not make much difference, for the observation which I was going to make, which is, that you must provide for one of the parties travelling from one point to the other.

11,820. Might I suggest there is no difficulty about that. One wants to get clear at this point. In two-thirds of the cases there is no defence, and if the petitioner started the case in the court where they resided——?—That does not get rid of the whole difficulty, if I may respectfully say so, for this reason. It is of the greatest importance, as your Lordship knows from the decision in Frith *v.* Frith, that a proper identification of the parties should take place. Now, directly you have to identify the respondent and the co-respondent as the parties mentioned in the proceedings issued in one of the courts—and you are assuming the respondent and the co-respondent are at a distance away—you then have to take the parties just as the engine driver in that case went to the place where the respondent and co-respondent in that suit were residing in order to identify them. Therefore you must have the petitioner, if he brings his suit in the district where he is living, proceeding to the point where the respondent or co-respondent are residing; or you must bring the respondent or co-respondent to the place where the petition is to be heard. That is where you get the difficulty that one or the other must provide for the travelling expenses between the two points; and, though it is true, many of them may be undefended cases, and you may bring your suit in the district where the petitioner resides, that does not get rid of the difficulty of ascertaining whether the party who has been served is the party to the suit. The practice of the county court as I understand it—I shall be corrected by Judge Tindal Atkinson if I am wrong—is this, that you have to obtain leave from a judge of the county court to serve the summons, or the petition as it would be in this case, upon the parties charged. That is done by remitting the necessary process to a bailiff of the adjoining county court, who knows nothing about the parties at all, and he proceeds to serve it and returns the document, when it is properly served, to the court out of which it is originally issued. Now, it is not as if it were served by the solicitor in the particular divorce proceedings, who is more or less acquainted with the parties, but by an officer of the court, who knows nothing about the parties at all.

11,821. The same difficulty arises wherever you start the suit. Somebody must identify the respondent?—Certainly; and the point of my observation is that you do not necessarily get by issuing process in the county court this very cheap process that everybody seems to think they are going to get. I do not think any of the gentlemen who have been before this Commission have in the bills of costs which they may or may not have more or less put before this Commission, considered the extra cost that would be incurred by the necessary process of getting the identification, and that is a very material matter.

11,822. All those bills of costs must have had the necessary steps taken?—But they have all assumed that the parties are living in the same district—that they are close by in the same town or village, as the case may be—and I should think it is very frequently not an inaccurate assumption that very often they would go to a considerable distance. One knows from one's knowledge of the working classes that they are constantly moving about all over the country, and, therefore, you get them perhaps going away from Liverpool to Leeds, or from Leeds to Great Grimsby, or from Great Grimsby to Great Yarmouth, and so on, which increases the difficulties of cheapening the proceedings as a whole. I think that is an important consideration for the Commission. I am only here to assist the Commission by calling their attention to facts that ought not to be omitted from their consideration.

11,823. I only wanted to know what the difficulty really was in your mind?—Now another difficulty suggested was that at the assizes it was very probable they would be kept waiting. That, of course, is a mere matter of arrangement by the judge of assize. He would probably dispose of the criminal list first, and he would allow a day's interval to elapse between the probable day of the ending of the criminal assize in order, if one case lasted a little longer than he anticipated, that he would not have brought them there too soon, and he would appoint a particular day for taking divorce cases, and he would take them then one after the other just as they would be taken in the county court.

11,824. You have sat as Commissioner on Assize I think?—Yes, three times, and I do not see any difficulty at all in making a sensible and businesslike arrangement for the disposal of the business of the assizes.

11,825. With regard to that paragraph in your proof where you refer to the present condition of the county court business; can you tell us from your experience as commissioner whether, if there was any material addition to the assize work in that way, it would be difficult to deal with it at the assizes?—At the great centres I think not—that is to say, in such great towns as Manchester, Liverpool, Leeds, and several other places. Your Lordship is aware fresh arrangements have been made quite within recent times for the disposal of the work in those large centres.

11,826. Yes, but take the country towns?—Well, if you go to the small places; the great complaint made I think by Mr. Winterbotham on behalf of the Law Society was, that there was not sufficient business at them to justify a judge going there at all, and, consequently, I think there is ample time at all these places for the judge on assize to deal with all this additional business. I speak subject to correction, but I rather gather nobody thinks there will be a very enormous accession of business—at any rate after the first year when, what Sir Lewis Dibdin has called "the arrears," are worked off.

11,827. I do not know whether you have been on circuit in any of the country towns?—Yes, the North Wales Circuit I had—which is one of the circuits more particularly attacked.

11,828. Is the time allotted to each of those towns sufficient?—Oh, quite sufficient. The fact is the business on the circuit with regard to the civil business was not very considerable, and the times have all been cut down so much in order to meet that particular state of things; but by lengthening the time at a place like Carnarvon by one day you have ample time to do it.

11,829. (*The Solicitor-General.*) Are you speaking of when you were Commissioner?—Yes. I went on that circuit, which I daresay you are aware, Mr. Solicitor, is one of the circuits where these alterations are suggested. There are one or two towns which might well be grouped one with another because they are so contiguous, or the business is so small.

11,830. (*Chairman.*) Then you were going on to No. 11?—"As to the working of the Summary Jurisdiction (Married Women) Act, 1895, the case of "Dodd *v.* Dodd (1906) Probate 189, and Harriman *v.* "Harriman, (1909) Probate 123, suggest the following "amendment of the law as desirable." I rather think, my Lord, these suggestions have already been made to some extent.

11,831. One of them has not, and a very valuable one?—Very well: "That orders, that the applicant be "no longer bound to cohabit with her husband and "for maintenance, should only be made in cases of "cruelty as defined by that Act, or of desertion for "two years and upwards. (2) In other cases of desertion an order for maintenance only should be made," Your Lordship appreciates that.

11,832. Yes, that might be a means of getting over the difficulties that have been put to us. One is where there is a real necessity for the permanence of the order?—Yes.

11,833. The first being cruelty; and the other where desertion had lasted so long that it was reasonable to

suppose it was intended to be permanent?—That deals with the Act of 1857, which says you must have desertion for two years.

11,834. Yes, but it is a valuable suggestion on some of the points we have had?—Now: "In other cases of "desertion an order for maintenance only should be "made." That gets out of the difficulty created by those two cases deciding that the desertion for two years under the Act of 1857 must be complete, and if you bring in a clause prohibiting cohabitation you prevent the women getting a divorce. "As regards questions of "amendment in the law relating to Divorce and Matri-"monial Causes, and the procedure and practice therein, "the council begs to make the following further "suggestions:—(1) That the law relating to foreign "decrees of nullity affecting English subjects, and the "jurisdiction of the court in such cases, as disclosed "by the decision in Ogden *v.* Ogden (1908) P. 46, "requires amendment."

11,835. We have had that point put before us. So that if an Englishwoman marries a Frenchman she should not be in the difficulty that that case presents?—Yes. "If a woman is charged with adultery in any "divorce procedings, notice should be given to her of "such charge, unless the court should otherwise "direct." Then No. 3 is important: "After a decree "for judicial separation the court should have power "to vary a marriage settlement, and to secure to the "wife permanent alimony for the term of the wife's "life, or for such less term as the court may think "fit."

11,836. That is only existing in divorce at present?—Yes, and we think it ought to be extended to judicial separation. (4) "After a decree for divorce, nullity, "or judicial separation, it shall be lawful for the "court, if it shall think proper, to order the respon-"dent, if he or she is entitled to any property either in "possession or reversion, to make such settlement as it "shall think reasonable of such property, or any part "thereof, for the benefit of the child or children of the "marriage."

11,837. That is extending powers that at present exist with limitations and qualifications and making those powers greater?—Yes, and then some small suggestions are made as to costs. (5) "Abolition of "citation, substituting therefor a warning to appear "on petition. (6) Service of plain copies instead of "sealed copies. (7) Reduction in court fees."

11,838. (*Judge Tindal Atkinson.*) I do not know how long you have been chairman of the council?—Three years.

11,839. And how long a member of the council?—I have been on the Bar Committee and Bar Council about 20 years. I was vice-chairman before for about 10 years when Sir Marshall Warmington was chairman.

11,840. I think the Bar Council have consistently opposed any extension of jurisdiction to the county courts, have they not?—I should hardly like to say that. Some schemes that have up to the present been submitted have not met with their approval.

11,841. Those schemes which have proposed extensions?—There was an extension suggested that did not meet with the approval of the council.

11,842. You have referred to some difficulty about excluding certain districts of the county courts. You said the judge could only take the cases in his particular district and he could not take the same case in another district in his own circuit?—I was referring to the fact that each county court judge has a district assigned to him.

11,843. Oh, you mean the whole circuit?—Yes.

11,844. But the circuit consists of so many districts?—Oh, I do not mean it in that sense. I meant one of the 55 districts into which the whole country is divided.

11,845. Then I should like to deal with the objection: "The large number and varying qualifications of the county court judges." You think that is important?—Yes.

11,846. That means that some of the county court judges are better than others?—That means some of the county court judges have not obtained the confidence of the public as some others have.

11,847. Does not that apply to all the judges?—Not to the same extent. There are only 16, I think it is, High Court judges. There are 55 or 56 of the county court judges as opposed to 16 of the High Court.

11,848. Assuming that is so, the reform is not for to-day or to-morrow, or next week, and that is an objection that might ultimately be removed?—Well, it is capable of removal.

11,849. Now the difficulty of depriving litigants in matrimonial causes of their right to a jury, and the character of county court juries. Well, it surprises me that the character of county court juries is said to be different from that of the juries in the High Court. Perhaps you would accept my experience if I tell you that my experience is that I have most excellent juries in the county court. You are not prepared to accept that?—I would not contradict that for a moment.

11,850. And I have had some experience of High Court juries in my practice at the Bar?—Yes.

11,851. And one can draw a reasonable comparison between the two?—Of course the juries vary in different parts of the country. You cannot draw any general conclusion. That is the mistake many people make. You cannot draw too general a conclusion from the particular experience you have had. You may find in one county court a very good jury and then go a little way off and find a very inferior one. It is because of the variations in the way that these matters are dealt with and looked at that the Bar Council thinks they should be excluded as far as possible. Human affairs cannot exclude every difficulty, and even in the High Court one knows juries vary, speaking generally, and the council is composed of a considerable number of gentlemen who practise largely in the county courts; as there was a practically unanimous view that the variation of juries in the county court would constitute a substantial matter that might lead to difficulties in these cases. If you were to go down to, say, Whitechapel, or some of these county courts, you would find juries who really hardly understand English.

11,852. Is that so now? Do you find any gentleman who refers to the country juries as not being equal to the other?—Yes, if you call a country jury Lincolnshire, for instance.

11,853. Or Hertford?—I have no experience of Hertfordshire. I have never been before a Hertfordshire county court jury. I have been in Kent and other places before I took Silk.

11,854. I will leave that question there. Now you think the want of uniformity in treatment would be a reason why the county courts should not have jurisdiction?—I do not know whether I can convey it in this way; different minds look upon the same facts in connection with these matters that come before the Divorce Court sometimes from rather different points of view. The fewer points of view you get with regard to those particular matters the better, rather than having many; and therefore if you only have 15 or 16 High Court judges administering the law you are more likely to get uniformity of decision, which we venture to think is most material, than you are to get it from 55 different judges.

11,855. How would there be any difference of uniformity as between 15 or 55. The only difference that would arise between one judge and another is the drawing of inferences from facts, is it not?—Not altogether.

11,856. Would that be one?—They take different views of—well, take such a thing as cruelty. One judge looks upon a particular thing as not being particularly cruel, whereas another judge would say it was horribly cruel.

11,857. That would apply equally to the High Court judges?—I do not think so because there would be a reduced number, and that is why you have always had two judges to the Divorce Division so as to have as much as possible uniformity of decision.

11,858. Then on questions of fact you think the parties are entitled to a jury, and if you have jurymen in the High Court you would have lack of uniformity

of treatment?—Well, I think the answer is this. Take a High Court jury of 12; you would have the consensus of opinion of the 12. You do not get an individual opinion of one, but you get it corrected and compared with and checked by the opinion of the other 11; and I should think you would get a more valuable opinion from the united body of the 12 than you would from one.

11,859. You could correct that by making the jury 12 in the county court?—You could correct it, of course. You could correct it by having a better class of juryman, or, as you say, by having 12.

11,860. Well, I differ from you upon the point about the jurymen. Now the question of assizes. You differ from Mr. Justice Deane, and Mr. Barnard and Mr. Priestley, who consider the assizes out of the question?—Very likely. I could not say that I know quite what Mr. Barnard, or Mr. Priestley, or Mr. Justice Deane said.

11,861. You know the minimum cost of an undefended action in London is from 40*l.* to 45*l.*?—I do not know that. I have heard it, but I have no knowledge of it. I do not practise myself in the Divorce Court, and much less do I know anything about the bills of costs, so that my opinion is not of the least value upon that.

11,862. That is what the Taxing Master of the Divorce Court puts it down as, and therefore you would probably accept his opinion?—I have no means of dealing with it. I do not say anything against that.

11,863. If you are bringing witnesses a considerable distance to the assize town how are the poor people to afford a sum of money like 40*l.* or 45*l.* Take for instance parties coming from the extreme north of Yorkshire to either York or Leeds; how do you propose they should do it?—I do not propose they should do it at all. All I say is even if you have the county court they have to get some distance. For instance, if you take such a district as Hertford, many persons coming to the county court come from a distance of some miles. Many of them travel from Hatfield, say, by train to Hertford, and they have to pay their fare there.

11,864. Hatfield does not happen to be in the Hertford district?—Well, take another town.

11,865. But if a witness has 7 miles, that is different to travelling from the north of Yorkshire to Leeds or York?—Yes, but you cannot, I think, provide for every possible combination of circumstances to exclude every possible difficulty. You may find in some small cases that even going to the assize towns hits some litigants more severely perhaps than others. But we venture to suggest that providing for such masses of population as you do by the assize towns you provide what is substantially a very large measure of relief for everybody.

11,866. Does it not strike you that the facilities for the poor are much greater when you have county courts—namely, 567 county courts spread over the country—than if you have only 50 or 52 assize courts?—56.

11,866*a*. Does it not strike you as giving greater facilities for poor people?—I quite agree it gives greater facilities, but as I said before I do not think that is the sole consideration. There are other considerations. When they get to the court they should have their case conducted by counsel, and there are other considerations of the State that come in which ought not to be excluded by merely considering whether you are going to give them 500 or 50 courts.

11,867. But assuming they cannot get there, why do you propose to shut the doors of the county courts to these poor people?—I should say then it is impossible to provide relief for everybody because if you get a person 10 or 20 miles from the county court you may say he cannot get relief because he has not even a halfpenny to get there. As some of the magistrates said, these women have not got 2*s.* to pay the costs of the summons. Well, in such a case a woman could not get 10 or 20 miles to the county court if you take a scattered population like you might find in parts of Yorkshire.

11,868. But taking the fact that poor people cannot get to the assize town and that they cannot get to these towns to which it is proposed a divorce judge should go down, then they are deprived of any remedy, Why do you shut the county courts to them?—For the reason I have already given.

11,869. Is not that a reason that we should shut the county courts altogether. Why should not you say county courts should never have been started at all and that every suitor should be driven either to the London courts for relief or to the assize court?—I do not see that at all. May I point out the distinction between the two cases is that in a case of debt, or a civil cause of action, the State has no particular interest in it; the plaintiff has an interest in getting the debt and the defendant in defending it; but in divorce cases the State has a particular interest in that particular litigation, and it is for the purpose of affording, from our point of view, proper protection to the interests of the State. You cannot put a litigation for a small civil debt on the same footing as the law as to divorce court proceedings.

11,870. I do not know that I made myself quite plain. I am assuming that the only remedy to the poor suitor in the case of divorce is the county court. You say he should not have the remedy because owing to the interest the State has in the matter it should go to the assizes, although it is impossible for him to get there?—It is equally impossible for the poor woman to provide 2*s.* for her separation order, and you say there, who is to provide the 2*s.* There are always those extreme hard cases, and it is those extreme hard cases that very often make very bad law.

11,871. Now it is proposed, I think, to reduce the number of circuit towns?—All kinds of propositions have been made. I do not think at present there is any existing proposal to reduce them. It cannot be done without an Act of Parliament. At present the criminal jurisdiction of the judges of assize compels the judges to go to each assize town to take criminals. The only way that has been altered is under the Winter Assizes Act where you can have power by Order in Council—which has been exercised—to consolidate a few of the assizes, and in the winter assizes in a few cases you reduce a number of towns in a few of the circuits. The Welsh circuit is one. The necessity of going to Anglesey and Carnarvon is obviated. Anglesey is quite close, of course, to Carnarvon, and you only have one judge at Carnarvon and he takes the criminals of Anglesey and Carnarvon at Carnarvon.

11,872. I gather with regard to the assize towns they would practically all have to go *in forma pauperis*?—That is a speculation. I think there is great difficulty in speculating as to the class of population who will avail themselves of the additional facilities. It is a mere guess I think. We think, rightly or wrongly, as far as one could tell, that in providing a proper *in formâ pauperis* procedure the needs of all the poorer classes would be met who at present have not the facilities which we think, in paragraph 6, they ought to be in a better position to obtain.

11,873. Do you mean practically they would be all *in formâ pauperis*?—I do not know about that. Take such people as foremen of joinery works who get their 4*l.* a week; and clerks who get their 200*l.* a year in a town like Bristol or a town like Exeter. They would all get very substantial relief, and in places like Manchester and Liverpool similar classes would have every reasonable facility given them.

11,874. Then you suggest the proceedings should be commenced in the district registry in the county court circuit.

(*Chairman.*) No, in the High Court District Registry.

(*The Witness.*) Yes.

11,874*a*. (*Judge Tindal Atkinson.*) Well, how many are there in the kingdom?—87.

11,875. Probate registries?—No. There is the district registry now which does all the ordinary work of the old central work of the High Court; they issue writs and so on ——

11,876. He is the county court registrar?—No, he is the district registrar of the High Court.

11,877. But he is the county court registrar too?—He may be both, I do not know.

11,878. Except in one instance, he is?—I do not think so in Manchester and Liverpool, and so on.

11,879. You say there are 87 district registries in the kingdom?—Yes.

11,880. Well, I have one in my circuit?—Yes. You see you are very close to London on your circuit. I will take my own circuit which you are familiar with, also in your recollection. Kent has a district registry at Maidstone with 33,000 inhabitants; Rochester with 30,000 inhabitants, very close to Chatham, which has a very large population; it has one at Dover and another one at Ramsgate. There are four district registries in a county like Kent. Then to take Devonshire as an example, you find a district registry at Totnes, and the number of inhabitants there is only 4,000; another one at Exeter with 47,000; another one at Barnstaple, a place inhabited by 14,000 people; and they have one at East Stonehouse which takes in Devonport and Plymouth, and Devonport and Plymouth have a population of 176,000 alone. I cannot find out what the added population of East Stonehouse would be; but that makes four places in a county like Devonshire distributed at convenient places for everybody to get at.

11,881. (*Chairman.*) Each of those district registrars is the county court registrar too?—Very likely he is, which is an additional advantage.

11,882. (*Judge Tindal Atkinson.*) The parties must there commence their proceedings?—Yes.

11,883. They have a county court registrar almost within five or six miles you see?—Well, I doubt if that is quite accurate. Even a Post Office is not sometimes as close as that.

11,884. Then with regard to the parties going to different districts. That is, of course, a difficulty which occurs in every county court proceeding. The parties may not be in the same district?—Very likely. The difficulty is not the less because it exists in other cases.

11,885. But it seems to me if it exists it may be an element. In most of these cases the people would be resident within the same district, and it sometimes happens the defendant is resident within the district or leaves the district, but those are difficulties that always occur?—No. But, I think, the motive for moving about in cases of misconduct is larger than in merely owing debts.

11,886. How would those parties be better off at the assizes?—I do not think they would be. I think they would be no worse off.

11,887. (*Sir Lewis Dibdin.*) I have only one or two questions to ask you. You told us how the Bar Council was constituted. Did you have a special committee to draw up this report?—Yes.

11,888. Were there many sittings?—We have had a good many sittings—I think 6 to 10. We had a considerable number of meetings, and we had upwards of three meetings of the council in which this report was debated.

11,889. And were those well attended. Was there a large proportion of your 48 there?—Yes. I could give the exact number.

(*Mr. Bingley.*) About 40 present.

(*The Witness.*) 40 out of the 48.

11,890. (*Sir Lewis Dibdin.*) You said you have a certain proportion of quite junior members of the Bar on the Bar Council?—Yes.

11,891. And the whole council are practising barristers?—Yes.

11,892. And there are a considerable number of men on the council who are actually practising in county courts?—There are several who are actually practising in county courts a good deal. I think a number of members of the committee spoke to gentlemen who also practise in county courts, but who are not members of the council.

11,893. In reference to the statement in the report that up to the present time the trial of divorce cases has been limited to London, which, of course, only strictly applies to the last 50 odd years that the present system has prevailed, your attention was called to the ecclesiastical courts. Are you aware at all what number of separations there were per annum in the ecclesiastical courts before the Divorce Act?—No.

11,894. There was a return ordered of those cases, I think, in preparation for the Divorce Bill of 1857?—I am not aware of that.

11,895. For the sake of getting it on the note, I observe in Mr. Shepherd's evidence before the Divorce Commission of 1851 (he was registrar of the Consistory Court in London), he says the average for the last five or six years before that date in London, which I think you would agree would be by far the largest of the Consistory Courts, was 12 or 15 cases a year. So you notice the total number was not very large before the Divorce Act was passed?—I am afraid I have no knowledge of that at all. I have never practised in the Divorce Court, and therefore I am rather at a disadvantage.

(*Chairman.*) The only reason I ventured to interpose was the use of the word "always" when each bishop had his jurisdiction.

(*Sir Lewis Dibdin.*) I quite agree, but I thought it might be as well to have it on the note.

11,896. It was put to you that if your proposal and the proposal of the Bar Council with regard to the assizes were adopted, it would mean a certain number of months' delay—or might mean a certain number of months' delay—before the case actually came to trial. In your opinion, would the difficulty of the interval be met by the present system of separation orders?—Well, speaking personally for myself—of course I have no authority to answer any such question on behalf of the council—that is a matter which I really prefer not to express an opinion upon, because I think an opinion coming from a gentleman like myself, who has no real experience in these things, would not be of any particular value to anybody

11,897. What I mean is a case of urgent cruelty where it was necessary for the wife to get protection, and would not bear waiting for four or five months until a divorce case came on; is not that exactly the case which the Married Women Act of 1895 was passed to meet?—Certainly. If it may be taken as my own answer and not as from the council, that would come within the very suggestion we are making here.

11,898. Then, I take it on the general position your view is, or the view of the Bar Council is, that while facilities for divorce should be increased in the sense of the difficulties of expense being removed, it is necessary from the point of view of the State that the matter of divorce should be still dealt with by a special tribunal and a tribunal of high standing?—We think the plane on which the whole of the divorce litigation ought to take place should be of the highest kind possible, and that the mere poverty of the parties to a divorce proceeding ought not to debar them from having a tribunal of the highest kind that they can get for the reasons of State that I have already indicated.

11,899. And for that purpose you would reduce the fees?—We should reform the whole procedure, for the purpose of fairly and reasonably meeting the requirements of the population who are requiring accessibility to the court.

11,900. And you would enlarge the *in formâ pauperis* jurisdiction?—Yes.

11,901. Remodel it?—Certainly.

11,902. When you had done that, you would regard it as important that these cases should come before a court constituted on a high plane?—Yes.

11,903. Is it your opinion that there would be some State objection on the ground of fairness if persons' divorce cases were dealt with by an inferior court simply because they were poorer than those who were able to come to the London court?—I do not think really I have sufficient knowledge to be able to answer that question with any degree of certainty. Of course, one knows, amongst the poorer classes (having been commissioner myself, I may say so) even the poorest prisoners resent being tried by a judge they call a "black judge," as compared with a "red judge." They do not like having a judge who is not robed in a proper way. They think they are being improperly treated. It is the same in civil matters. If the judge

has a black robe, the prisoner looks disappointed to begin with.

11,904. (*Lord Guthrie.*) If the local administration be limited to the poor, the Bar has no substantial financial interest in this matter at all?—Oh, certainly not. I think the Bar of England are the most generous people, and they really frequently place their services at the disposal of litigants without taking any fee for it.

11,905. But if it had been proposed to allow local administration to apply to persons of all means, then the Bar would have had a substantial reason to limit the right of audience; but if it is proposed it should apply to the poor, the Bar has none?—I do not think we have allowed the financial considerations to enter into our consideration.

11,906. And you cannot care, because there is no financial consideration?—No, that may be so.

11,907. You have had in view that the proposal is only to provide local administration for persons under certain incomes?—Oh, we have had that in mind.

11,908. I suppose there is no doubt that the anticipation in the 1857 Act, which undoubtedly was entertained that the remedy should be equally available for the poor as well as the rich, has not been realised?—I think that is so. That is the foundation of paragraph 6.

11,909. You do not think that could be got over by the use of national funds to pay the expenses of poor litigants being brought to London?—I really do not know. I think one looked upon that rather as being an impracticable measure—substantially impracticable. The Treasury, as you are aware, is very difficult to get anything out of, and we have never regarded that as a practicable proposal.

11,910. It is common ground that there must be local administration of some sort?—Some sort of local administration for the poorer classes.

11,911. Then would you state your view as between the assizes and the divorce judge in London going circuit?—With regard to the divorce judge going circuit, the difficulties that occurred to us substantially were these: You would have, to begin with, to get an accession of strength to the Divorce Division. It is exceedingly difficult to guess what amount of work the judges going round the country would have to perform. You cannot send a judge of the High Court round except with, shall I say, a certain amount of state and expense, and to send in addition to the judges of assize another judge altogether from the Divorce Court Division roaming about at different intervals through these different counties would, to begin with, put on the sheriffs of the counties considerable expense, as well as on the counties themselves. They have to provide the judges lodgings, and the sheriffs have to provide carriages for the judge, all of which would entail a substantial expense throughout the country. Then the judge has to go with his servants and marshall and so on, which is provided for at a rate of payment per day at a considerable charge on the Treasury; and you would have to get the Treasury to consent to an increase of expense with regard to that. We thought, to begin with, we should never get the Treasury to allow the additional expense of sending an additional judge. Next, you would have an outcry from the different counties saying this is imposing another additional charge; and on the whole, balancing the one against the other, we came to the conclusion that the judges of assize were a fit and proper tribunal. It is not to be forgotten that from time to time judges of the King's Bench Division when any judge of the Divorce Division is ill have sat in the Divorce Court, and therefore there are judges in the King's Bench who have had experience of the divorce proceedings, and it does not come entirely new to them.

11,912. Then with regard to the method, do I understand the council are of opinion that if there is to be local administration there ought to be provision for poor people having professional assistance?—Certainly.

11,913. And do you think that professional assistance, if possible, in such important questions both as to the status of the parties and the interests of the children who are not directly represented, should include both counsel and solicitors?—Certainly. We think counsel are very essential. My Lord has already pointed it out in his report.

11,914. If there is to be professional assistance, that, I suppose, would not be limited to London barristers and solicitors. There would require to be some facilities for people having professional assistance in the different places?—Well, there is a large Bar which goes round with these judges, and they are on the spot.

11,915. Then as far as solicitors are concerned it would not of course be by appointment of certain London solicitors?—No.

11,916. The law societies throughout the country would require to appoint annually persons to act for the poor?—You could have a rota very easily. The district registrar would know who the solicitors in the locality are and could suggest anybody.

11,917. So that the poor person would have somebody in the neighbourhood to whom they could first apply instead of having to communicate with London, as at present?—Certainly, they need not come to London at all. Under our idea they would have complete local facilities for local administration up to the time of the trial.

11,918. Would such a system involve in fairness that there should be some kind of tribunal which could report before the persons were admitted to the benefit of this system that the case was *primâ facie* a proper one to bring?—That is introducing more or less the Scotch system.

11,919. I mean that?—May I say this about that. It is very difficult, of course, at once to formulate a proper code as to how to deal with these *in formâ pauperis* cases. The matter of the Scotch system was some time ago brought before the council, and we considered it, but the fundamental difference, if I may say so, between our idea and the idea on which the Scotch system is founded is that we think no counsel ought to have any pecuniary interest in the result of the cause. Now in your system if the pauper is successful the counsel gets his fees and the solicitor gets his fees; but it has always been considered fundamental in the Bar of England that they should not be interested in success from the point of view of fees. If you once introduce that you do not know where you go to. You at once—as we think, rightly or wrongly—introduce in the mind of the counsel a different consideration, which ought to be absolutely absent from him when he is conducting a case, namely, that his own pay is dependent upon the success.

11,920. I quite agree. Unless you had the system of reporters who would stop bad cases, you would have an interest in counsel and agents bringing cases with a hope of succeeding; but if you have a system of reporters before whom both the plaintiff by counsel and agent and the defendant by counsel and agent can appear, and whose decision is appealable to the court, which can either reverse or confirm them, do you see any reason why in that case, when cases are passed as proper cases, if the defendant is able to pay, counsel and agents should not be remunerated?—Well, we do not like it.

11,921. What improper motive for carrying on a case if that system were adopted could there be?—No, I do not mean improper motive. It is making the payment of his fee dependent on the success of the litigation.

11,922. But you do agree you would require some system for preventing frivolous applications?—Certainly, and the difficulty is to formulate in reference to our own idea a code to deal with the subject.

11,923. Would you agree that there should be an appeal to the court as to whether the case was a proper case?—Yes, I think so. That is met in our case, as I have already said, by the party attacked being able to take out a summons to dismiss the whole cause as frivolous and vexatious, and then the defendant brings forward such facts as he thinks right to rely upon to support that contention.

11,924. Is it the fact that you have a register of counsel and solicitors on every circuit under the Poor Prisoners' Defence Act?—No, the way that is done is that the judge can make an order that a poor prisoner

is to have a solicitor and counsel. The clerk of assize always has a list of counsel and solicitors, and he selects in his discretion the solicitor or the counsel who should be assigned to a particular prisoner. As a rule he takes them in order. He gives *A.B.* such and such a counsel, and *C.D.* the next, and so on.

11,925. So you do not think there is any practical difficulty in developing a system which to some extent is in embryo already?—No—any substantial difficulty I mean; any difficulty that could not easily be got rid of.

11,926. Do I understand your view is that whatever might ultimately be found necessary, at all events at first the assizes should be tried to see if they answer?—Yes.

11,927. If it is found that does not afford any substantial improvement some other system could be adopted?—Yes, it does not prejudice any future consideration of the subject if this is not found a successful one. One does not, of course, foresee everything.

11,928. (*Mrs. Tennant.*) Your proof contains no recommendation to remove or reduce the present inequality as between man and woman for grounds of divorce?—No.

11,929. Is the omission accidental, Mr. Harrison?—No, that was considered to be a question of public policy which we did not deal with. That is one of the matters, you will observe, which we say involve differences of opinion on which we do not pronounce any opinion. Those are matters of public policy on which a professional opinion of the Bar *quâ* Bar is not much better than anybody else's. The Bar consists of a large number of gentlemen, for instance, who practice in the Chancery Division, and the Common Law Division, and so on, and we do not arrogate to ourselves any better capacity to express an opinion than a very large number of other gentlemen on such a subject as that.

11,930. (*The Solicitor-General.*) You are speaking in reference to the assizes with the experience both of judge—you acted as commissioner—in trying cases, and also as a member of the Bar who has attended circuit; your own circuit?—Yes, but of course the council's opinion was not founded on those things. I told them what I thought about it, of course.

11,931. But your own opinion is founded on a large experience?—Certainly.

11,932. I want to understand what you mean in reference to the assize courts. Would it be your view that in every case in which there is an assize, either civil or criminal, that there should be a duty on the judge to try any cases set down for trial at the assize?—Certainly.

11,933. Any divorce case?—Yes, that is my personal view, certainly.

11,934. That would mean he would have to attend about three times a year at least, and in some cases four?—He would attend at each assize, and there is a criminal assize at each of the assize towns three times a year, and he would take the divorce at the end of the crimes.

11,935. The circuit system is very much under review, is it not?—As far as I am aware any alteration has been entirely dropped. I have not heard of any suggested alteration at the moment.

11,936. But perhaps I might say at present it does not give universal satisfaction?—No, that is owing to the paucity of judges. It is the fault of trying to get more work out of the judges than they can do.

11,937. There have been a good many attempts to deal with the circuit system?—Yes.

11,938. But they have not been effective?—No; but we hope we are going to have two additional judges. We were anticipating that there would be an increase in the judicature.

11,939. I will not discuss that which is now before Parliament. There are difficulties in its continuance as the Bill at present is framed. Now in reference to juries. I do not understand why it is there should be any difference in the kind of juryman you would get in a common jury on assize to those attending a county court in that district?—I do not know why it is, but there is a difference undoubtedly.

11,940. Are not they selected from the same class?—I believe the panel is the same, but, as you know, in many places the mode in which the service upon the jurymen is effected is not at all satisfactory, and I am not sure that that may not afford the solution.

11,941. I was going to suggest that really the difficulty is that the selection of jurymen does seem in some places not to be properly carried out?—No.

11,942. There are some people who ought to be served and who are not served?—Never served at all—for years and years; they never get served at all, and others are served over and over again. Why that is it is not for me to say.

11,943. If it is the same panel it would not matter so long as the law was properly administered?—Quite.

11,944. And if you had a proper impartial selection there is no reason you should not get as high-class jurors as in the High Court?—If everything was perfect the result would be more perfect.

11,945. But your criticism only relates to the way the selection is made in county courts?—Because I can give no other reason why it is so, but that it is so; in fact, I do not think there can be any doubt at all in a great many instances. I went about a good deal in county courts at one time in my career, and I was absolutely aware of the difference in the juries in those days, and I am told that that sort of thing still exists. I have not been in a county court before a jury myself for 9 or 10 years now.

11,946. That is comparing the common juryman in the High Court with the county court?—Yes.

11,947. Is there any power, do you know, of selecting special jurymen in the High Court?—I think not.

(*Judge Tindal Atkinson.*) No, but we generally can get a picked jury. The registrar can get you a good jury if he likes.

(*The Solicitor-General.*) That is by his own process of selection.

(*The Witness.*) A very significant observation.

11,948. (*The Solicitor-General.*) That gives some idea, perhaps, how it is done. Now, supposing the county court judge tries without a jury, there is no appeal under the law as at present administered?—There is no appeal from the county court judge except on law, and there is that anomaly now that if a county court judge tries a case where 90*l.* is involved there is no appeal from him on the question of fact, whereas if a High Court judge tries the same you can go to the House of Lords.

11,949. There might be very serious matters where you deal with the marriage status?—Yes.

11,950. And it might be serious to allow no appeal from the county court judge on a question of fact?—Yes, that is so.

11,951. Then one question as to the *in formâ pauperis* matter as to which Lord Guthrie put questions. As I understand your view, speaking from a long experience at the Bar, there is no practical difficulty in getting barristers to act for clients who are unable to pay?—None whatever.

11,952. And the one fundamental rule of our Bar has always been, has it not, that the counsel engaged in the case should never have any financial interest, direct or indirect, in it?—Quite so.

11,953. That is to say, his fee must be entirely apart altogether from considerations of whether the case is to be won or lost?—Quite, and it has gone so far that where the county court judge has power under the County Court Act to increase the fee of counsel the Bar Council would not permit counsel to allow their fee to be increased by the judge, because we thought it would infringe that fundamental rule to which you have alluded.

11,954. And that fundamental rule is based on this view, that it is desirable in order that the case should be conducted upon a high plane that no consideration of that kind should ever enter into counsel's mind?—Certainly.

11,955. Then suppose there was a question of frivolous suits being brought, there would be no difficulty in practice in allowing an application to a judge

in chambers to deal with the case on the ground that it ought not to proceed *in formâ pauperis*—that is to say that no *primâ facie* case could be made out—would there?—No *primâ facie* case that he is a pauper?

11,956. No; apart from the fact that he is a pauper, I am thinking of this. In these cases there is some danger of a person being made a co-respondent, say, in a divorce suit, who is innocent, but against whom a suit is brought which may very seriously affect his social standing, or which may affect him in his public business?—Yes.

11,957. And therefore it would be desirable in cases of this kind that the court should have some hand over the class of suits that are brought *in formâ pauperis*, and that the court should be able to say no *primâ facie* case is made out and the suit ought not to proceed?—I think so. That is dealt with in our law by capacity to take out a summons to dismiss the whole thing as frivolous and vexatious, which means no cause of action is shown.

11,958. I did not want to have to argue a point of law with you, but is not that a different kind of procedure from the case I am suggesting? You may take out a summons to dismiss the suit either because the pleadings disclose no cause of action, or because by affidavit in some way you may show that the cause of action is frivolous and vexatious; but you will agree that is a difficult proceding to succeed in?—Always difficult.

11,959. The burden would always be on the person making the application to establish that?—Yes, because *primâ facie* he is supposed to have the opinion of counsel in his favour, and therefore you suppose more or less that what he is stating is true.

11,960. Apart altogether from that jurisdiction, which is always a difficult one in which to succeed—necessarily and rightly if I may say so—would not there be a much easier and simpler process by allowing an application to a judge in chambers where names would not be mentioned, and he would deal with the case before him and say that on the affidavits before him there is no case and that it should not be allowed to proceed? Do you see any difficulty in that?—I do not see a difficulty in it, but I do not see that that very materially differs from the application to dismiss as frivolous and vexatious—no real material difference; because if you were to take your tribunal in the way you suggest, an application would be made to stop the proceedings.

11,961. Not to allow him to proceed?—He would then say the onus is on you, you know, of showing to me why I should stop this man from going on.

11,962. There would be this difference ——?—It would be in chambers, but there are applications to dismiss as vexatious and frivolous begun in chambers.

11,963. But there is a difficulty that if there is an affidavit sworn on the one side the court will not decide on it?—No.

11,964. That is why I say I want something more. In an ordinary case, if you get an application to dismiss an action, say, for libel on the ground that it is frivolous and vexatious, and there is an affidavit filed showing *primâ facie* that it is frivolous and vexatious, you get in answer to that an affidavit filed stating facts to show that it is not, and the court will not go upon that but say we will not interfere?—Yes.

11,965. What I am suggesting is that it might be very useful in proceedings of this kind—which must be dealt with, as you say, rightly, on a different basis from just a claim for a debt—that the court should have some power to deal with a case, more particularly where you are giving rights to sue *in formâ pauperis*, of an extensive character to prevent a person having to defend a suit or having to undergo the ignominy of defending a suit of this kind?—I did not quite appreciate what you said before. I do not see any difficulty in making such a provision as that, and it would be very useful.

11,966. It might be very salutary?—Very salutary. Those sort of provisions are things that require careful consideration, if I might say so, and though it strikes me *primâ facie* that your suggestion is a very valuable one, one would like to consider it a good deal.

11,967. I am only making it as a suggestion that I should get your views upon it. I agree it wants a deal of consideration, but it was suggested to me by Lord Guthrie's questions to see how you could meet the point?—Yes.

11,968. (*Chairman.*) May I ask two questions. One is on paragraph 3 of your memorandum: "The council "is of opinion that it is desirable that such issues "should be dealt with by a small, rather than a large, "number of judges." Do you think it would meet with your approval if a limited number of county court judges, as has been suggested—say, five or six—were delegated to take the whole of this jurisdiction and travel round the country?—I do not think it would entirely. It would meet it to some extent, but not entirely. I do not think that would be very satisfactory in itself.

11,969. It would go largely towards meeting the general difficulty you suggest of the probable lack of uniformity?—It would to some extent meet it.

11,970. And it would suggest that a special selection had been made, probably by the Lord Chancellor, for the purpose of giving that jurisdiction?—It is very difficult to carry out such a procedure.

11,971. I only ask you because that suggestion has been made to us?—Yes.

11,972. And to some extent I think it is quite possible—even by those who wished to see one tribunal doing it—that it might meet it to some extent?—It would diminish the objection to a certain extent.

11,973. Then the other point is on this. Do you regard the matter from a State point of view—whether it is of greater interest to the State for the people to be permanently separated or divorced?—We did not go on that.

11,974. But you are dealing with the question of the high plane on which these divorce cases should be dealt with, if I may say so?—Yes.

11,975. That is a matter I do not think anybody disputes the necessity of, but do you regard it as a matter of greater interest to the State to deal with permanent separation or to deal with divorce?—Speaking personally, entirely for myself, I think they are on almost the same important standard.

11,976. Because they place the two people at any rate apart, though in one case the legal tie remains?—Yes.

11,977. If that puts them both on the same plane, how would your general view as to the desirability of uniformity be reconciled with leaving magistrates all over the country with jurisdiction to make permanent separations?—There is the great difficulty about that, I think—a very great difficultly—the very greatest difficulty. Speaking personally for myself, I do not quite know how you are to meet that difficulty, considering the vast number of magistrates there are. I do not know what the number of these separation orders may be, but a considerable number.

11,978. There is some dispute about that, but it runs into a thousand or two at any rate, or perhaps more than that?—With regard to the administration of that jurisdiction by the stipendiary magistrates, speaking entirely for myself, in London it seems to me, from the little I have seen of it, that it is very admirably done by them; but your Lordship, of course, will be aware that there are indications of considerable variations of treatment.

11,979. I quite agree, but might I put this for your consideration. That is a jurisdiction which it seems reasonably necessary must be exercised all over the country for the protection of the people and for rapidity?—Yes.

11,980. And because of want of means, and urgency of cases?—Yes.

11,981. But it ought to be on the same plane from the State point of view as divorce?—I rather think it ought, my Lord, certainly.

11,982. Well, if that is so it is not in the view of the State departing from that by giving county court judges jurisdiction?—Yes; I am not in favour myself of giving county court jurisdiction in cases of separation.

11,983. But I mean in divorce. I want to present my difficulty. If the true view be taken separation between the parties is just as important looked at from

the State point of view as divorce, and separation is dealt with by multitudinous tribunals all over the country, logically it would seem to follow that there would be no objection to well-established local tribunals, though not High Court tribunals, dealing with local cases?—I think it comes to this, that you need to provide justices of the requisite calibre to deal with what ought to be dealt with, and if you say I will not provide a sufficient staff to do the work then I say as much work as they can do they ought to do, and it is no good to say there is much more that they ought to do when you do not provide the staff for it. I have thought for a long time that the staff provided for the transaction of judicial business has been wholly insufficient, and is so now; and I entertain some doubts whether the two additional judges will be sufficient to do all the work that I think they ought to do.

11,984. Then it comes to this, broadly, that if you can provide for the High Court judges at assize giving adequate time, and doing the matter at convenient intervals, that will be the best tribunal to be provided?—I think so.

11,985. You have to get it there with adequate strength to do it, and with adequate frequency?—Yes; and we think with the addition of two judges the court can deal with it.

11,986. Then the point I was putting about the interests of the State being apparently equally applicable to permanent separations as to divorce cases would rather lead to something being done possibly between the magistrates and the High Court?—Of course, if you are going to say, I decline to provide proper tribunals for the adjudication of what in the eye of the State is an important matter, you might as well send them to anybody you like. You might say you would not provide sufficient county court judges, but we will leave the postmasters at the post offices to deal with certain matters. The State can do what they like, of course.

11,987. But that is a difficulty that presents itself?—Well, we think the additional two judges will meet that point.

11,988. (*Sir Lewis Dibdin.*) May I put one question? Do you regard separation which does not dissolve the marriage tie, and divorce which does, and renders them capable of re-marriage, as the same in principle?—No; what I think is that the permanent separation order is of such an important character that it ought to be dealt with by a proper tribunal.

11,989. The assumption my Lord makes you do not agree with?—No.

11,990. (*Chairman.*) I did not suggest they were the same. I asked Mr. Harrison if, in the interest of the State, there was any difference whether the parties were permanently separated, or whether they were divorced?—Yes. As to litigation *in formâ pauperis*, I do not think there is any rule in the county court dealing with suits *in formâ pauperis*.

(*Judge Tindal Atkinson.*) We deal with it in the same way as the High Court. We have no rules.

11,991. (*The Solicitor-General.*) Would you tell me in respect of one matter which is not covered by your proof? Did you discuss the question as to whether there should be any restriction on the publication of proceedings in the newspapers?—That was mentioned, but that was a question of public policy which we thought other people were quite as capable of forming an opinion upon as we were.

11,992. There was diversity of opinion, was there? Did you get as far as that?—No, I do not think there was much diversity of opinion upon that; but, as we laid down the rule that we were not going to discuss questions of public policy, we thought we would not embark on that.

(*Chairman.*) I ought to thank you, Mr. English Harrison, on behalf of the Commissioners, not only for your time, but for the evidence you have given.

Adjourned for a short time.

Mr. CHARLES ELTON LONGMORE called and examined.

11,993. (*Chairman.*) Are you Clerk of the Peace for Hertfordshire, Clerk to the Visiting Committee of the Hertfordshire County Lunatic Asylum, Registrar of the Hertford County Court, and a member of the Council of the Law Society of England?—Yes.

11,994. You have been requested by the Associated Provincial Law Societies to give evidence on their behalf?—Yes.

11,995. You state there is a difference of opinion amongst the societies as to the points which are under consideration, but you are endeavouring to express what you understand to be the views of the majority, and also your own?—Yes.

11,996. Does that mean a substantial majority?—I think the great conflict is as to whether some increased jurisdiction should be given to judges of assize, or whether it should be given to the county courts. The majority are in favour of the county courts, but not a very large majority. There are about 44 associated societies coming from all parts of the country. Some, like Liverpool and Manchester, have already given evidence before the Commission.

11,997. You represent the societies for all parts of the country?—Yes, including Liverpool and Manchester. I have a list of them here: there are 44 of them. They come from all parts of the country.

11,998. Perhaps you would give us a list of the societies?—Yes. They are as follows: Ashton-under-Lyne, Stalybridge and district, Bath, Berks, Bucks and Oxfordshire, Birmingham, Blackburn, Bolton, Bournemouth and district, Bristol, Burnley district, Bury and district, Buxton, Cambridgeshire, Chester and North Wales, Cornwall, Derby, Devon and Exeter, Gloucestershire and Wiltshire, Hampshire, Herefordshire, Herts, Isle of Wight, Kent, Lancaster, Leicester, Lincolnshire, Liverpool, Manchester, Merthyr Tydfil and Aberdare, Newcastle-upon-Tyne, Norfolk and Norwich, Northampton, Nottingham, Plymouth, Preston, Rochester, Chatham and Gillingham, Sheffield district, Shropshire, Somerset, Sunderland, Sussex, Swansea and Neath, Wolverhampton, Worcester and Worcestershire, Leeds.

11,999. We will deal first with the question of conferring jurisdiction on county courts. You commence by referring to the Act of 1857, which was passed to meet the difficulties of that day, more or less, and you observe that the power given under that Act has been extensively used by the middle classes, but I gather that it is not capable of being used by the poorer classes?—It is true to say that the courts are open to the poor as well as the rich, but practically they are not, because the expenses of proceedings in the Divorce Court are such that the poor cannot avail themselves of them.

12,000. Do you agree with what Mr. Musgrave said about the cost?—Yes; I think it is about right. I have made inquiries into it.

12,001. I do not think we need go into that in detail. County courts have, in fact, brought opportunities in a large class of cases, not divorce cases, now before the poor?—That is so.

12,002. They have also very extended jurisdiction in other matters?—Whenever these jurisdictions have been extended the criticisms which have been made before this Commission have been made—namely, that the judges are not fit for the extended jurisdiction; but the critics have always been disappointed in the result, and the extension of jurisdiction has always given satisfaction to the public.

12,003. First of all, do you think there are cases in which, if the parties had the means, they would take divorce proceedings, whereas they cannot now take them?—I certainly think so. I have a few cases here which have come under my notice. I do not know whether I need trouble you with them in detail.

12,004. No?—They show that there are many cases in which the injured parties are entitled to a divorce, and are not able to obtain it, solely on the ground of

expense. Some of them are perfectly hopeless cases, like those in which the husband or wife has gone abroad with another person and is living in adultery.

12,005. Is that a common case in your experience?—Yes, quite common. I am not talking of the very poorest of the poor, but rather the respectable working class. Unfortunately, it does arise sometimes. I may perhaps just mention one case I happen to know myself, where a woman who was a barmaid married a man and he committed bigamy, and she had to go back to her work as a barmaid, and could not get a divorce because of the expense. In that case there is no hope of their making it up again under such circumstances as those.

12,006. Then the question which does present a difficulty is with regard to what courts should be adopted for the purpose of getting rid of these troubles?—Yes.

12,007. You have three courses which you are suggesting:—Divorce cases to be tried on circuit, that is the assizes; divorce cases to be tried by High Court judges being sent down by the Divorce Court, or the county courts with a limited jurisdiction. There are those three suggestions you make?—Yes.

12,008. You have already stated, I think, that the third, namely, the county courts, was the only real remedy?—Yes, I think so. I am under-sheriff of the county and have been for 30 years, and I always see what takes place at the assizes three times a year. I think the expenses of proceedings before the assize judge would be quite as great as they are now. As far as my own county is concerned, I think that the jurisdiction of the Court in London would be better than having a case tried at the assizes. We have in my own county 10 available county courts sitting at least once a month, and 10 towns in which there are registry offices where proceedings could be commenced.

12,009. Apart from the question of expense, do you think that the business would be capable of being dealt with at the assizes in a satisfactory way?—I think perhaps the judge would just try the case exceedingly well, but there are all the interlocutory proceedings to consider. There is the question at the commencement of alimony, and there are questions as to the costs which have to be found by one party, and all questions like applications with regard to the custody of children, and access to children, where you must have someone who is constantly on the spot to deal with them.

12,010. Whereas the judge who is taking assizes cases would not be there?—No, and another judge would come next time. You would have to wait till the judge came round for some of these detailed small applications.

12,011. Then you observe that there are 567 places in England and Wales at which county court judges sit?—Yes.

12,012. Whereas there are 56 assize towns?—Yes, and there are 87 district registries, which is a very small number compared with all these county court registry offices.

12,013. I think you have already dealt with the next point. Is there any High Court registry in your county?—No.

12,014. Where is the High Court chamber work done?—In London.

12,015. Then you go on to say that a man or woman having cause for divorce consults a local solicitor at one of the county court towns?—Yes. If the proceedings were in London he would have to employ a London agent to transact the business: he could not do it himself. If the proceedings were in the county court he could arrange to carry through the proceedings for a small fee, or, if he chose, to do it for nothing; but if the procedure were in London he has to come to an arrangement with his London agent, and he cannot ask him to work for nothing.

12,016. The certificate of solicitors in the country would not extend to practising in London?—No.

12,017. Therefore he would have to employ counsel?—A London agent and also counsel,

12,018. Is there a registrar's office in every market town in Hertfordshire in the county court?—There are 10. I think that is a very good number over the county.

12,019. How often are the sittings held?—The judge sits once a month and the office is open every day.

12,020. You are Registrar of the Hertford County Court, I think you have already told us?—Yes.

12,021. Do you consider that the machinery in the court would be adequate for the purpose of dealing with these cases?—I think it would be.

12,022. Would your bailiffs be adequate for the purpose of getting information about people in case inquiries were required?—Yes, the bailiff would be a useful man to make inquiries, and if thought desirable, I cannot see why the chief constable should not make inquiries, and report to the King's Proctor if necessary.

12,023. What is the maximum distance to be found in Hertfordshire from a county court?—I should think seven miles would be the outside.

12,024. With regard to giving jurisdiction to certain of the county courts as distinguished from others, what do you say to that?—I do not think that would do at all. The judges of the small courts are men of equal experience and equally as good as those of the larger courts, and many judges in their circuits have both large and small courts, and are quite as capable of dealing with the cases in the small courts as they are in the large ones. I think it is very important that the jurisdiction should be given to all courts if it is to be any real relief and any real economy.

12,025. It comes down to this, as far as those courts are concerned: a question whether they are a fit court and the registrars fit officers for doing the work?—That is so.

12,026. Do you consider from your experience that these cases would be difficult?—I do not think they would raise difficult questions of law; and with regard to fact, of course if the parties are not represented on either side, it is always difficult for the judge to get the real facts out, but the county court judges are so experienced in that class of case, as they constantly have cases where the parties appear in person without any legal representatives, that I think they would be as likely to get to the real truth as the High Court judges would.

12,027. Do you consider it a sound suggestion that possibly the poorer people might resent being relegated to the county courts for their cases?—It does not appeal to me. I think the poorer classes like the county courts very much, except sometimes when they are defendant, or when it is used as a means for getting money out of them, but that objection exists in every court.

12,028. In your district is the court well abreast of its work?—Yes, very well indeed.

12,029. It is impossible to tell at this moment, if this jurisdiction were conferred, how many cases one might expect?—Yes.

12,030. Do you think that there would be room for their being tried, to put it shortly?—I think plenty. I think the county courts would be able to cope with the business without any increase of judges.

12,031. Do you attach any importance to a suggestion which has been made that there might be lack of uniformity in decisions?—No, I do not, myself. I cannot see that there would be any more lack of uniformity with 55 judges than with two if those two differ very widely.

12,032. And deal with all the work?—If you have a judge very much against granting divorces, and another judge who is very much in favour of them, I should think that the average of 55 would bring about more equal justice than those two extremes. I think they would all try and do what is right.

12,033. Would you give this jurisdiction to the judge alone, or would you allow the introduction of juries?—Personally, I prefer to give the jurisdiction to the judge alone; but if it is thought right to give jurisdiction to judges and juries I have no fear of the county court juror. As under-sheriff of the county it is my duty to summon all the juries at the assizes, and as registrar of the county court to summon the juries for the county court judge, and they are taken

from exactly the same class. They are the same men.

12,034. Did you hear the suggestion which was made by Mr. English Harrison about there being a difference between the two?—Yes, and the only way I can account for that is this. Owing to education there has been a very great improvement in the common law juror during the last 10 or 15 years, and I should think when Mr. English Harrison used to appear in the county court it was before education had improved the juror.

12,035. You get the same class in the High Court as n the county court?—Yes. I have a great deal to do with the list: as Clerk of the Peace I prepare it. It is sent to the under-sheriff, and from that list I summon all the jurors at assizes. It is my duty to send to each registrar in the county a portion of the list which affects them, and from that list they summon the county court juries. There is one suggestion I should like to make. I think perhaps I should prefer if juries were to try the case to increase the number from 8 to 12. It is more a matter of sentiment than anything else.

12,036. Do you mean that generally, or only with regard to these divorce cases?—I should rather prefer myself that county court juries consisted of 12 men.

12,037. Exactly the same as in the High Court?—Yes.

12,038. With regard to a suggestion that litigants might seek out a judge who was more favourable to them in one district than he might be in another, can you suggest any safeguard for that?—I should suggest that proceedings could be only taken in the district within which the petitioner has lived for a certain time.

12,039. You have already dealt with the other point in your proof. What limitation would you place upon the people as regards means?—I should reject the question of assets altogether, because I think they would be difficult to ascertain. I should take the joint income and put it about 160*l.* a year, or something like 3*l.* a week.

12,040. It has been suggested that a wife suing, especially where her husband had disappeared, might be in a difficulty in satisfying a judge about the joint income. Have you any suggestion to make as to how that difficulty might be met?—I should have thought that she would not have had any very great difficulty in proving what the income of her husband was, at all events when he left her.

12,041. With regard to damages, you propose to limit them to 100*l.*?—Yes.

12,042. You think a right to claim damages should be maintained?—I should rather prefer to put the damages at 100*l.* I think there should be some damages.

12,043. What have you to say about audience in the county court?—I think, if you are really going to make proceedings cheap and within the reach of poor people, you should allow solicitors to have audience. There is no doubt in a great number of cases, cases of any complication or where the means would stand it, counsel would be employed; but I think it would be a great mistake to deny solicitors audience. They have hitherto had audience wherever the jurisdiction of the county courts run, and I think they should have audience in these divorce cases if they were under the county courts. The judges get to know perfectly well the solicitors who practise before them, and they know whom they can trust and whom they cannot. I do not think there would be any risk from that.

12,044. You have given some figures here about the cost of employing counsel. What do you say about that?—I think it would certainly make it more expensive. I say in the High Court a defended country case costs about 185*l.* If the procedure in the county court were similar to that in the Probate, Divorce and Admiralty Division, I think a defended case in the county court would cost about 55*l.*, or about 45*l.* if no counsel were employed, and if neither counsel nor solicitor were employed, about 12*l.* I think it would be possible, without injuring its efficiency, to make the procedure in the county court in divorce matters very much more simple, and if that were done a lower scale might be taken, what we know in the county court as Table A.

12,045. You are speaking of defended cases?—Yes. If this simpler procedure were adopted in a defended case the cost would be about 29*l.* if counsel were employed, and about 27*l.* if no counsel were employed, or about 11*l.* if no counsel or solicitor were employed. With regard to undefended cases, the average cost in the High Court is from 52*l.* to 58*l.*, but if the divorce procedure in the county court were that in force in the Divorce Division the costs would be about 19*l.*, or, if no counsel employed, about 11*l.*, and with neither counsel nor solicitor employed, about 4*l.* I think a simpler procedure might be adopted, in which event Table A. might be applied, and then it would cost 10*l.* if counsel were employed, and 8*l.* if no counsel were employed, and if no counsel or solicitor, I think it might be done for about 3*l.* 17*s.* 6*d.*

12,046. Broadly speaking, your point is that the High Court would always cost more than the county court?—It must always be so.

12,047. What do you say about the possibility of there being collusion in the county court cases?—I do not think there is any more chance of collusion in the county court than in the High Court. In the county court district the registrar and the bailiff and the police officers who are in attendance know all about the parties. I think we should very soon hear of it if there was any collusion.

12,048. You would allow an appeal to the Probate Division?—Yes, I think I would.

12,049. If necessary both on the law and facts?—Yes.

12,050. In that appeal you suggest that the judge of the county court should have power to assign counsel or counsel and solicitor to poor litigants, and that the costs should be defrayed out of the Imperial funds?—Yes, out of the Imperial funds. That is done now in appeals to the Court of Criminal Appeal. The judges there can assign either counsel alone or counsel and solicitor to any applicant before them, and it works very well.

12,051. Passing to another point, you are clerk of the peace for Hertfordshire, and see the magistrates work too?—Yes.

12,052. What do you say about the power to grant separation orders which the magistrates have?—I think the power to grant permanent separation orders is a very large one to give to justices of the peace. I know that the practice in petty sessional courts differs very much indeed as to granting separation orders. In some they are easy to get, and in some I may say they are almost impossible. I think that the power to grant permanent separations should be given to a tribunal having a legal training.

12,053. You also make a statement in your proof about the petty sessional court having power to grant orders?—I think that they should have power to grant a temporary separation, say for six months, or something of that sort, so as to allow the application for the permanent separation to be made to the county court.

12,054. Would you confine that power to grant temporary separation to cases of conviction for aggravated assault or cruelty?—Yes.

12,055. Where protection is absolutely required?—Absolutely necessary at the moment.

12,056. For the other cases you would only allow the maintenance order?—Yes.

12,057. With regard to this question of operating for six months only, do you foresee any difficulty if that principle were adopted?—I think six months would be enough time. It should be ample time to allow the application for the permanent separation to be made to the county court.

12,058. Have you considered the case of a poor woman who gets a temporary order for six months? It would be some considerable expense even to get in the county court a permanent separation order?—I do not see why it should be expensive at all. I should

think that for a very small fee the application might be made to the county court judge.

12,059. You think that might be provided for?—Yes. I think a scale of fees might be made under any Act which may follow as the result of this Commission. That might be provided for. I see no reason why it should be more expensive than in petty sessional courts.

12,060. If the woman at the end of six months was determined to maintain the position of separation, do you see any objection to her being entitled to apply upon the facts already proved, or should she have to prove the matter over again?—I would leave it as a matter of evidence. I should think the fact that the magistrates had granted a temporary separation would always be of great weight with the county court judge. I would not tie his hands.

12,061. If she remained separated during the six months and wished to persevere in that position, there would be nothing in the way of cruelty or assault possible in the meantime. There would be nothing new, only the old facts. How do you suggest that should be dealt with?—I think she would have to prove her case again, but no doubt the county court judge would not go back upon a conviction for an aggravated assault. He could not. I should think in the High Court it would have immense weight if there was a conviction for an aggravated assault. I do not think you would find the High Court would be likely to go back upon that in a matter of cruelty.

12,062. Then with regard to the Licensing Act of 1902, you think that the jurisdiction of the magistrates to grant separations should be transferred to the High Court and the county court?—Yes.

12,063. At present the High Court has no jurisdiction?—No.

12,064. It does not meet any cases, except those of the very poor?—Yes.

12,065. Would you leave that with the magistrates?—I do not think it would be necessary. I would only leave the power to grant temporary separation to the magistrates in cases of cruelty, where, really for the protection of the party, it was necessary that an order should be made.

12,066. Would you regard the application of the Act of 1902 as being of a much more permanent character?—Yes. There would be no harm in delay in the case of drunkenness. The application might be made in the first instance to the county court. Why I would propose to leave the power of granting temporary separation to the magistrates in cases of cruelty would be because they may have a case before them where they think it desirable for the protection of the woman or the man, as the case may be, that it should be granted at once.

12,067. They would be the tribunal before whom the case of aggravated assault would come?—Yes.

12,068. The other would be a mere sequence of it?—Yes.

12,069. With regard to the question of the publication of reports of divorce cases, before I ask you about that I would like to know whether this is a matter upon which your association are agreed?—I do not think they are. They are agreed to this extent: they consider, whatever the rule is in the High Court with regard to it, that it should be the rule in the county court.

12,070. That does not help us very much?—Then I must tell you my personal view, because they will not go further.

12,071. Is there a division of opinion?—A very great difference of opinion.

12,072. Can you tell us the proportion of that difference?—I should think about half and half upon it.

12,073. Then we will take your own view?—My own view is that it is a necessary evil, the publication of these reports. I think it would be a great mistake to limit the publication of them. I think you must leave it to the Press to be wise in what they publish. I think it would have a very bad effect on the witnesses. They would be more likely not to tell the truth. I think the fact that there is publication makes them dread to tell what is untrue, and, further than that, I think rumours get about as to the evidence which has been given, which possibly may be very unfair to the innocent person, and it is very much better, I think, for the protection of all parties interested, that the real truth should be known, which, bad though it may be, is not often as bad as the rumours which get about.

12,074. How much consideration have you given for the public who read these cases, in stating that opinion?—I cannot say more than that I think it is a necessary evil. I think that it would be a great danger to suppress them.

12,075. With regard to the division of opinion in your society, you represent one half?—Yes.

12,076. Does the other half express itself entirely against publication?—I think the other half would be in favour of the publication of the mere fact, a sort of register of what has been done.

12,077. That means really the charge and the result?—I think we would all agree that the judge, if he saw fit, should hear the case *in camera*, if he thought it was a very bad case indeed.

12,078. You have made very plain what your association thinks. Now with regard to the question of amendments, are these matters upon which there is a difference of opinion in your association?—Yes, there is a difference of opinion also with regard to this.

12,079. We will take them separately. The first you deal with is the equality of husband and wife?—I think the majority are in favour of that. I certainly strongly am.

12,080. Will you give the reasons which have led you to that conclusion?—I think that the wife has as much right to the chastity of the husband as the husband has to the chastity of his wife, and I think in this matter women have a decided grievance.

12,081. With regard to the practice you suggest that in any case where a woman was the guilty party and is charged along with a man, that she should be served and have a right to appear in the proceedings?—Yes, certainly she should have an opportunity of appearing and resisting the case.

12,082. Then, in the next paragraph in your proof, you say you think that there might be a simplification of the practice, and thus the expense reduced?—Yes: I think that a great deal of expense is incurred in divorce proceedings in interlocutory proceedings, proceedings for particulars, better particulars, discovery, interrogatories, and things like that. I would propose, in the proceedings when commenced by petition or summons, that the petitioner should be obliged to give the best particulars he can, and should be confined to dealing with those in the court, unless, say, 14 days before the trial, he gives notice of further facts upon which he intends to rely.

12,083. I gather you think that he should swear to his particulars?—Certainly.

12,084. Would you supplement that by requiring the solicitor to swear them too, so far as he is able?—Yes, I think it would be as well.

12,085. You have a suggestion to make with regard to interrogatories. Can you tell us what that is?—Yes. That is mainly on the point which I mentioned just now. I think that both parties should be able to give notice of the documents they intend to rely upon to the other side.

12,086. Without the formal orders?—Yes. I think it is quite unnecessary. Both parties should be obliged to give notice of all the facts which they intend to prove, and all the documents which they intend to produce, and it should be limited to those at the trial.

12,087. With regard to other matters, you have some evidence to give on the question of lunacy. I would like to ask you one question before I come to that, because I do not find that you have dealt with it. We have had it suggested, namely, whether you or the association that you represent, have come to any conclusion about divorce being granted on the ground of wilful desertion over a lengthy period?—I think the majority think that would be dealt with by the adultery. Probably, if there is a desertion over a lengthy period there has been adultery.

12,088. It would be reasonable, you think, to infer after a certain period that that had taken place?—I think so.

12,089. Without actually formal proof of it?—Yes, I think it would not be unreasonable to infer that.

12,090. Now we can pass on to the question of lunacy. What have you to say about that?—Personally I think that it would be exceedingly dangerous if divorce could be granted on the ground of lunacy. I have figures here which will show you that you cannot possibly tell whether or not the lunacy will be permanent. I can show you that there have been several cases where doctors have stated, according to the best of their opinion, that the lunacy was permanent, where it has turned out not to be the case and where there has been recovery. I am also clerk to the Visiting Committee at the Hertfordshire Asylum, and it is my duty there to see with the Committee all the patients that are discharged, and we find frequently patients are discharged when the Medical Superintendent thought that there would not be the slightest chance of recovery. Further than that, we find that when patients come to the asylum they are very apt indeed to think that there are spiteful reasons for keeping them and for sending them there, and I think if there was a possibility of a divorce for lunacy being granted they would frequently be apprehensive that that was the reason they had been sent to the asylum. We find that the visits of the husband or wife, as the case may be, and of the children, to the patients when in the asylum are of the greatest possible benefit, and frequently produce recovery. I think it would be adding a new terror to lunacy if the fact that one of the parties to a marriage became insane were to be a ground of divorce.

12,091. That is looking at it rather from the point of view of the lunatic. Are you quite taking into consideration the position of the person who is left outside?—I naturally feel very sorry indeed for the person who is left outside, but on the whole I think he took his wife for better or for worse, and it is one of the risks all human beings must run.

12,092. Will you amplify that and say why?—Because I think on the whole that it would be a matter of very great hardship indeed to the lunatic if divorce could be granted because of the insanity of one party, and weighing the whole thing together I think you would be doing greater harm to the lunatic than would be justified for the benefit of the husband who was fortunately sane.

12,093. I want to fully appreciate it, because we all feel the difficulty of this. There is a case in your paper—I will get the figures all together in a moment—where you say that a person was discharged after having been in the asylum for 20 or 25 years?—14 years I think it is.

12,094. I am coming to the other one directly?—Yes. That is an extreme case in the table.

12,095. I want to know whether your views have sufficiently considered the case of a person who might in very early life, a short time after marriage, be left as I said, outside?—My sympathy would be very much with that person, but it would not carry me to the extent of granting him or her a divorce.

12,096. With regard to the figures you give here, you say that 1,070 lunatics were discharged as recovered from the London County Asylums in the year 1908; 39 of marriageable age had been in between 5 and 10 years?—That should be "had been insane" not "had been in."

12,097. And 13 between 10 and 15 years, and one between 20 and 25 years. That is what you say?—Yes.

12,098. Can you tell me at the London County Asylums how many married people there are at the present time?—I could not tell you.

12,099. We will have some statistics from the Lunacy Commissioners about that later on, but you cannot tell us that now?—No.

12,100. Do you know how many cases there were of people who had remained in for the rest of their life? That is only cases of discharge?—Yes.

12,101. I should like to know also what ages they went in at, and so on. Can you tell me whether the 61st Report of the Lunacy Commissioners to which you refer contains any figures which would show that?—I daresay it does. I could get those figures for you if you want them.

12,102. Do not trouble to do that, because the Lunacy Commissioners are going to come later on to give evidence. Then you say in the year 1886 there were 8,009 admissions into 43 asylums?—That is those whose statistical tables could be compared. They have been open for a time.

12,103. In the 20 years from 1886 to 1905, 2,991 or 37·3 per cent. of these recovered. Does that mean that the remaining 63 per cent. did not recover?—They did not recover. They either died in the asylum or——

12,104. How many of those are married? I suppose you cannot tell us?—No.

12,105. Of these 2,991 recoveries, 2,665 or 88·8 per cent. recovered within two years; 271 or 9 per cent. recovered from two to five years; 49 or 1·6 per cent. recovered from five to ten years, and 16 or ·5 per cent. recovered from 10 to 20 years?—Yes.

12,106. In the Hertfordshire Asylum, in the years 1906 to 1909 inclusive, that is four years, the total cases discharged recovered were 170?—Yes.

12,107. How many were there in the asylum in those four years?—I should think there would be about 800.

12,108. One hundred and forty-one were discharged recovered within two years, ten were discharged recovered within two to three years, ten were discharged recovered within three to five years, seven were discharged recovered within five to ten years, and one was discharged recovered within 10 to 15 years, and in the case of one who was discharged recovered the duration was unknown?—Yes.

12,109. There, again, that is your asylum?—Yes, that is the Hertfordshire Asylum.

12,110. Can you tell us how many people have remained in from the time they went in till they died?—No, but I could send you the figures, if you care to have them.

12,111. Could you for that asylum send the figures of the ages or approximate ages of the people when admitted, and the duration of their stay there?—Yes.

12,112. And whether they were married or not?—Certainly, and showing which of them recovered, and which did not, and, if recovered, within what period. (App. IX., p. 68.)

12,113. If you could do that without much inconvenience, we should like to have it. You have already pointed out the advantage of their friends visiting them and the effect it has upon them?—Yes, I think that the doctors attach great importance to it.

12,114. I think I have covered all you want to say about insanity. With regard to penal servitude, have you considered the question of granting a divorce in that case? By the way, to what extent are your societies in accordance with the views you have just expressed with regard to lunacy?—I think in the main that they are against any alteration in the law beyond what I have stated, putting the woman in the same position as the man.

12,115. Can you tell us the state of the division of opinion with regard to lunacy?—No, I do not think that they have considered that very fully.

12,116. Do you mean that it has not been a subject of resolution?—No, they are against granting a divorce on the grounds of lunacy.

12,117. When you say that they are against it, how many do you mean?—I should say two to one against it.

12,118. There has been no actual resolution passed one way or the other?—The resolution that there should be a divorce was rejected.

12,119. By a majority of two to one?—Yes.

12,120. With regard to the number who are in favour of it, can you tell us in what form their suggestion was as to the number of years that the lunacy had lasted and as to the improbability of their recovering?—I think they think about three years.

12,121. Three years after that?—After that, after a doctor or a certain number of doctors, have certified that the prospects of recovery were small, then divorce should be obtainable.

12,122. When you speak of this majority, is that the whole of the Association's delegates?—The delegates from the various associations.

12,123. Can you tell me how many came?—Yes, about 40 or 50.

12,124. I was asking you, I think, about punishment by long sentences of penal servitude. Upon that, have you only your individual opinion, or have you anything to say on behalf of the associations?—I think this is only an individual opinion. I have seen a certain amount of criminal work myself, and as a rule the relations of the convicts are very fond of them. I do not think that as a rule they want divorce. I think it would be quite sufficient if they could obtain a divorce, in courts which would not be costly, for adultery. I think that would be quite enough; I do not think that it is necessary to go beyond that. I do not think the mere fact of conviction should entitle a man or a woman to a divorce.

12,125. Would you make any difference according to the class of offence for which they were convicted?—I would leave it in that way, if it involved adultery, they should have it.

12,126. We looked the other day at the statistics which dealt with the kind of case which gets long sentences, and some of these cases were offences of such a character that it might be difficult to say that adultery had been committed. Would you include those?—Cases of that sort?

12,127. Yes, you know the sort of cases I mean?—Yes, I quite understand, and I should certainly give them for that. I meant rather in the wider term by "cases of that sort."

12,128. I mean cases which have no connection whatever with anything sexual where heavy sentences are given?—I should not give it for those, but for anything sexual I should.

12,129. How does this accord with the views of your members?—I think that they would agree with that. They would agree if there had been any sexual offence to grant a divorce.

12,130. Have there been any resolutions passed?—No, I do not think there have.

12,131. (*The Earl of Derby.*) Have you any statistics which would show how many of the lunatics, say in the Hertfordshire Asylum, are the children of parents who, on the one side or the other, have been lunatics?—I have no doubt that a considerable number would be. I could include those in the figures which I promised to send you.

12,132. Do you think you could?—Yes, I think I could.

12,133. You agree to a certain extent that it is hereditary?—And so, unfortunately, are many equally bad diseases. I think if you once begin to interfere with the marriage tie on account of the evils the flesh is heir to, you are taking a very great responsibility. If you start doing that, you must do it with things like cancer, consumption, and many other things.

12,134. Do you not think that there is hardship to a woman whose husband has been shut up for lunacy, that he should be allowed out on the assumption that he is cured, and that they should resume co-habitation?—Yes, of course I do think that it is a great hardship, but I do not think you can prohibit sexual intercourse by those sort of people. I have often felt, when I have seen them discharged, what a terrible thing it is that this young woman is going back to her husband's house, but I could not conceive any law which would prevent it.

12,135. I am thinking less of the persons than of the State as a whole. Is not there a possibility of giving the man or the woman a chance, as the case may be?—Suppose the case of a woman who has been in an asylum and been insane, and you grant a divorce to her husband; and she recovers and comes out. You cannot prevent her marrying someone else, and if you cannot, what good have you done to the State? All you have done is, that you have precluded her from having children by the first husband she married. You cannot preclude her from marrying again. I am afraid you cannot carry the protection of the State as far as that.

12,136. With regard to the recoveries which you speak of, have you any statistics which show how many of those cases, which are discharged as cured, eventually come back?—Some of course come back, and I will include those in the figures which I am going to send you.

12,137. Cannot you give us any idea, for our information now, of the numbers?—No, but I should think perhaps 25 per cent. come back.

12,138. You think we may take it that those who are discharged as recovered, who do not come back, are roughly 75 per cent.?—I am not an expert, but my idea is that those who come back would be much more likely to be those who had been back in the asylum for a short time, that is to say, habitual drunkards. They come to the asylum for a short time, and get cured, and begin to drink again, and back again they come. The percentage of people discharged as recovered after three years, who have come back, would not be as large as the percentage of those who have been there a short time.

12,139. Would it be possible in the returns to give some idea of how long they have been out between the time they were discharged and the time they were received again?—Yes, I will give you that.

12,140. Your experience is at the Hertfordshire Asylum?—Yes.

12,141. Have you ever found that women who are confined there as lunatics have had children?—Never, unless they have been enceinte when they have arrived.

12,142. Nothing of the kind has happened there?—So far as one can humanly tell, it is impossible. They are marvellously careful indeed.

12,143. Have you heard of cases?—I have not of my own knowledge. I have not heard of one in the Hertfordshire Asylum or the Arlesey Asylum. There are tremendous precautions taken against anything of the sort. The only people who would have access to the women's part of the asylum would be the medical superintendent and the medical staff. No other man would be allowed in there at all, and nobody except those officers would have the key.

12,144. You have never had any case of women who have escaped from the asylum?—No, I do not remember any. They have escaped, but that has not occurred.

12,145. That result has never occurred?—No, I have never heard of it.

12,146. (*Lord Guthrie.*) Do I understand you to say, with regard to divorce, that there are three classes of people in the country. The people who are quite able to afford the High Court as it is now, that is the first class?—Yes.

12,147. Then there is the class who are able to afford a moderate sum, but not able to afford the high cost which is at present involved?—Yes.

12,148. And then, thirdly, there is the class who really would require gratuitous assistance, they being left to pay the cost of witnesses?—Yes, or else a very cheap tribunal. I daresay there might be some so poor that they could not pay anything.

12,149. Excepting the cost of witnesses. It is reasonable, if a person is going to seek a divorce, that apart from professional assistance he should pay for the witnesses?—Yes.

12,150. You think that the first class should be left as it is at present?—Yes.

12,151. Would you provide for both the other cases by the county court procedure that you suggest?—Yes, I would, except those within the income of 160*l.* a year. I dare say there might be some who were better off than 160*l.* a year, who would find it a very great struggle to take proceedings in the High Court.

12,152. Whatever limit is fixed, at the maximum of that limit and for a certain extent downwards, you have a class who can pay a moderate amount?—Yes.

12,153. Below, when you come down to 1*l.* a week, you have a class of people that could only be expected to pay the cost of witnesses?—Yes.

12,154. You have been asked, as between the county court and the assizes of a London Divorce judge going on circuit, which of those systems would necessarily bring you up against the dead wall of the Treasury, and which would not?—I should say that the more expensive system to the Treasury would be giving the jurisdiction to the assize judges.

12,155. Or sending a judge down?—Sending a Divorce judge round would be more expense still.

12,156. Either of these would necessarily involve an addition to the number of judges?—Yes, I think they are undermanned now.

12,157. We can judge for ourselves whether an appeal to the Treasury would be likely to succeed if they could reply, "You have county court judges on "the spot; why not employ them"?—If I were the Treasury, I should say that.

12,158. Would your proposal of the county court system demand anything from the Treasury?—I think not.

12,159. If centres were fixed, the salary of the county court judge might require to be increased. Is that what you mean?—I think it would be a pity to fix centres. I think it is better to give jurisdiction to all county courts.

12,160. If you did fix centres, that would have to be faced by the Treasury and would be an objection?—Yes.

12,161. You think, even although the assize system, or the circuit system, is the better system, that it is not practicable for financial reasons?—No.

12,162. Whether better or worse?—Even if it is better, I do not think it is practicable for the reasons I have given about the interlocutory proceedings, I think you must have a judge on the spot.

12,163. You were asked whether you thought there was any risk of poor people resenting being relegated to the county court. The risk rather is that the rich people will ultimately say that they ought to go to the county court?—Yes, they may.

12,164. Do you think that is rather a serious risk?—I should not go so far as that. I should keep the county court more or less of a poor man's court. I think it is better that those who can afford it should have divorce proceedings in the High Court. I am not here to say that I consider the county court better than the High Court.

12,165. If the rich people come ultimately to make the demand, you would have a sufficient answer by saying, "It is not necessary in your case, whereas it was necessary in the other case"?—I do not think they would make the demand.

12,166. Then in regard to the publication of reports, have you seen the Sunday papers with the headings "Stories from the 'Divorce Court"?—No, I do not think I have.

12,167. Do you not think one would require to see that material before forming an opinion upon the question?—I go more by the daily papers which I see. The daily London papers, I think, are very reasonable.

12,168. You have suggested what one quite feels, that in some cases a full report is very desirable, and you are assuming that there is a full report. Is it not the fact that there never is a full report, but only the spicy details?—But I think, as a rule, in the London papers they give a fairly full report.

12,169. In the good papers that is so, but I suppose if the practice of all papers were assimilated to the good papers, you think that the result would be satisfactory?—Yes, I think that would be quite satisfactory.

12,170. In regard to lunacy, in the asylum books, have they any entry of cases considered irrecoverable, which would enable us to see what percentage of them ultimately turn out to be recoverable?—I think it is very likely they have that. I have seen the books with the medical superintendent's writing in, and their opinions from time to time.

12,171. (*Sir Lewis Dibdin.*) You take a great interest in this subject, I know?—Yes, I do.

12,172. You were a member of the Committee of the Law Society whose report has been put in here this morning?—Yes.

12,173. I need not say I have no doubt that you took a share in its production?—Yes, I took some, I agreed with it.

12,174. When you say that there is a considerable difference of opinion amongst the societies which you represent, is there a difference of opinion on the county court question?—Yes, certainly, I think that is the main conflict. The main conflict is as between the High Court judges on circuit and the county courts.

12,175. Might I ask you what kind of proportion?—On the Council of the Law Society——

12,176. No, not the Council of the Law Society, but the country associations which you are here to represent. What would be the ratio of those in favour of the county courts and those in favour of the assizes?—I should think two to one in favour of county courts. All the places where there are no assize towns now are strongly in favour of the county court.

12,177. A good many of those who now have the assizes at their town are in favour of the assizes?—Yes, some of them are, but the assize jurisdiction is no good to the man who has not an assize town near him.

12,178. You are one of the registrars in his Honour Judge Tindal Atkinson's district?—Yes.

12,179. You speak a good deal about Hertfordshire?—Yes.

12,180. Hertfordshire is governed, or, at any rate, influenced a good deal by the fact that London is so near?—It is.

12,181. It is hardly a typical case?—I do not know; I think it is. In Hertfordshire it would be no advantage to us to have cases tried in the High Court in London with regard to the poor people who cannot afford it, nor is it any advantage to have their cases tried at the Assizes at Hertford. If we had to decide between those two, we should probably choose the High Court in London, but we have ten county courts in the county, and should therefore prefer the extension of jurisdiction in divorce cases to the county courts.

12,182. That is why I suggest that Hertfordshire is not a typical English county upon this question?—I think Hertfordshire is a county where, perhaps, the High Court is less inconvenience than in many other counties.

12,183. I gather from the purport of your evidence that you regard the marriage question as an extremely important one, and you think that the marriage tie should certainly not be lightly dealt with?—Yes, I agree.

12,184. Do you not think it is possible to make divorce too easy?—I do not think that you should refuse it upon the ground of expense, which you really do now. I do agree that it is a mistake to make it too easy, and beyond what I said about putting the sexes in the same position, I would not extend the grounds.

12,185. I am not speaking of the grounds of divorce. I follow that you are not in favour of their extension; but, apart from expense, do you not think it possible to make divorce too easy or too accessible?—Not if the person is entitled to it. If you get a woman whose husband has committed adultery, and left her and gone abroad, I think you cannot have it too easy for her.

12,186. You do not think that the fact that you can get divorce in the nearest county court, for, as you suggest 2*l.*, would have an unsettling effect upon, for example, the agricultural labourers?—No, I do not think so. I think the poorer classes are wonderfully forgiving, and I do not think it would increase divorce if you facilitated it. There are many cases—and I could mention the details of several if you care to hear them—where there are really very sad cases.

12,187. That is not quite my question. Do you not think, if you make divorce so easy as to access that the court is at the poor man's door, and so cheap, only 1*l.* or 2*l.*, that you would unsettle the feeling of permanency in the marriage tie in the country districts?—You are assuming a condition of affairs where adultery has been committed and not condoned.

12,188. I am not?—At all events, I am considering it.

12,189. My question is with regard to people who may not have committed any matrimonial offence, newly married people, if you like. Would it not altogether lessen the feeling of permanency in the marriage tie, the fact that they knew at their door there was a divorce court accessible for a just cause, so easy and so cheap?—I should think they would never think of it unless their partner had committed adultery. What I mean is, people in a better class of life, who can afford divorce, are not constantly thinking of the Divorce Court. They never gave it a thought, until unfortunately, something has happened which makes it necessary for them to go there. Surely the conduct of the better classes and the rich towards their spouses is not affected by the fact of the existence of the divorce court. Why should it unsettle the poor?

12,190. I do not think that you must assume that quite. Is it not really a question of degree, of how cheap divorce is to be made. You speak of diminution of the fees and of *in formâ pauperis* jurisdiction. Those are all questions of degree. I mean you can make divorce cheaper, whether it is retained in the High Court, or whether it goes to the county court. It is a question of degree, is it not?—I do not believe at all in the efficiency of the *in formâ pauperis* proceedings if you have a woman entitled to a divorce.

12,191. As they are now, I agree, but I think you said that they ought to be altered so as to make them more effective?—I do not remember that I was asked that question.

12,192. I thought you were?—Might I explain what I think with regard to the *in formâ pauperis* position. Supposing in a country district a woman had been deserted by her husband who has committed adultery, and she goes to a solicitor and consults him. If jurisdiction exists in the county court, that solicitor can carry through the whole proceedings himself for a small fee; if he prefers to do it, he can do it for nothing. If, on the other hand, the proceedings have to be taken in the High Court, and he has to take proceedings *in formâ pauperis*, he has to employ a London agent and a counsel. It is a very difficult thing for a country solicitor to have to write to his agent in London, and ask him to be good enough to take a case for nothing.

12,193. Is that all you mean by the London agent?—Yes.

12,194. The London agent does not cost any more to the client than if you do not employ him?—You may know something of the woman and sympathise with her, and perhaps be prepared to do the case for nothing.

12,195. You mean that you may be charitable yourself, but that you cannot make your London agent charitable?—Yes, that is what I mean. I have found it very unpleasant myself.

12,196. That is the point about the London agent?—Yes, the result is, if you can afford it, you have to pay your London agent yourself.

12,197. It is not that the costs are greater because you employ a London agent?—No, they are much higher in the High Court.

12,198. (*Chairman.*) Are you centred yourself in Hertfordshire?—Yes, I live at Hertford.

12,199. That is only a very short distance from town?—Yes.

12,200. Those people who come from your neighbourhood have practically the same access to London as most people would, if they had had only an access to their central county town?—Yes.

12,201. You find that the people in your parts cannot avail themselves of such a thing?—No, on the ground of expense.

12,202. So also it would seem to follow, if you fixed on an assize town, the parties who are not right in the town would be in the same difficulty as your people with regard to London?—It would be no good to them whatever. I think it would be better, as far as Hertfordshire and the High Court are concerned, to leave the jurisdiction of the Divorce Division as it is. Giving it to the county courts would be an immense good.

12,203. With regard to the question of lunacy, you spoke of a person who had been divorced coming out of an asylum, and then there being the possibility of marrying again?—Yes.

12,204. But that would be a matter as to which a spouse would be entitled to exercise a choice?—Yes.

12,205. If she comes out without any divorce, or without the person outside having any right to one, there is no choice about it?—I think it would be a hard thing to have that choice if she had been insane a short time.

12,206. Would there be a real hardship to either of them, except a hardship got rid of in favour of the one left outside, if this jurisdiction were confined to cases where there was permanent lunacy, and that lunacy had been reasonably established by testing it for two or three, or four or five years?—I think that is a matter which I should like you to ask the opinion of medical experts, as to the power of forming that opinion. I am told it is exceedingly difficult to tell.

12,207. Apparently there are people who are confined for an enormously long time in these asylums?—Yes.

12,208. I do not see where you think the advantage exists to the State of their coming out and being able to have further children, with a likelihood of returning?—I think it is a great responsibility for the State to take upon itself to say that it will dissolve the marriage tie on the ground of illness of any sort. If you begin by doing it on the ground of insanity, you must extend it to other diseases.

12,209. That is the position. The State would not act unless put in operation by the person who said, "This is too hard for me, I will not live in this state "with you in an asylum all your life." The State does not act unless it is put in motion?—I think no doubt that it is exceedingly hard, but I think on the whole it would be a mistake for the State to assert to itself such a power.

12,210. (*The Earl of Derby.*) In your evidence you seem by some of the answers you have given to Sir Lewis Dibdin to negative some of the things which you said before?—I am sorry. It was a most effective cross-examination.

12,211. I want to summarise what I think to be your opinion. Will you tell me if this is correct or not? Granted the offence is the same, you wish to put the rich and the poor on the same footing?—Yes.

12,212. At present the poor are not on the same footing owing to the expense?—I agree.

12,213. Granted that it is made cheap and put within the power of the poor to obtain a divorce, you do not think it would be any more unsettling for the poor than the present law is for the rich?—I agree absolutely.

(*Chairman.*) We must thank you very much for your evidence.

Adjourned.

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